TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 346

MATSON NAVIGATION COMPANY, THE OCEANIC STEAMSHIP COMPANY AND MATSON TERMINALS, INC., APPELLANTS,

vs.

STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED AUGUST 6, 1935.

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[fol. 1] [File endorsement omitted]

[fol. 2]

IN SUPREME COURT OF THE UNITED STATES,

October Term, 1935

MATSON NAVIGATION COMPANY, a Corporation, THE OCEANIC STEAMSHIP COMPANY, a Corporation, and Matson Terminals, Inc., a Corporation, Appellants,

vs.

STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA, John C. Corbett, Fred E. Stewart, R. E. Collins, H. G. Cattell and Ray L. Riley, the Members of Said State Board of Equalization, and Charles J. McColgan, Franchise Tax Commissioner of the State of California

Petition for Appeal, Assignment of Errors and Prayer for Reversal—Filed June 17, 1935

PETITION FOR APPEAL

Considering themselves aggrieved by the final decision of the Supreme Court of the State of California in the above-entitled cause, the petitioners in said cause, Matson Navigation Company, The Oceanic Steamship Company, and Matson Terminals, Inc., hereby pray that an appeal be allowed to the Supreme Court of the United States in said cause, and that an order be made fixing the amount of cost and supersedeas bond thereon, and in support thereof [fol. 3] allege that in said cause the validity of the Bank and Corporation Franchise Tax Act of the State of California was questioned on the ground that it is repugnant to the Constitution of the United States and that said decision was in favor of the validity thereof.

ASSIGNMENT OF ERRORS

And the said Matson Navigation Company, The Oceanic Steamship Company and Matson Terminals, Inc., make the following assignments of error:

The Supreme Court of the State of California erred in rendering its said decision and in making its order affirm-

ing the order of the State Board of Equalization referred to therein, in each of the respects hereinafter stated, that is to say, the said court erred in affirming said order of the State Board of Equalization and in thereby making each of the following holdings:

(1) That said decision of the Board of Equalization did not violate the Constitution of the United States;

(2) That the State Bank and Corporation Franchise Tax Act (California Stats. 1929, Chapter 13, as amended, California Stats. 1929, Chapter 781) is not repugnant to the Constitution of the United States;

(3) That said act does not tax the privilege of doing interstate and foreign business, although it imposes a tax [fol. 4] on the privilege of doing business measured in part by net income derived from interstate and foreign business;

(4) That said act does not violate Section 8 of Article I of the Constitution of the United States, although it imposes a tax on the privilege of doing business in interstate and foreign commerce;

(5) That said act does not deny to petitioners the equal protection of the laws guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States, although it imposes a tax on the privilege of doing interstate and foreign commerce;

(6) That said act does not deprive petitioners of their property without due process of law and without just or any compensation, although it imposes a tax on the privilege of doing interstate and foreign commerce;

(7) That said act does not burden interstate and foreign commerce in violation of Section 8 of Article I of the Constitution of the United States, although it imposes a tax on the privilege of doing business measured in part by net income derived by petitioners from interstate and foreign business;

(8) That said act does not deny to petitioners the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States, although it imposes a tax for the privilege of doing business [fol. 5] measured in part by net income derived from interstate and foreign business;

(9) That said act does not deprive the petitioners of their property without due process of law and without just or any compensation in violation of the Fourteenth Amendment to the Constitution of the United States, although it imposes a tax on the privilege of doing business measured in part by net income derived by petitioners from interstate and foreign business;

(10) That said act does not burden interstate and foreign commerce in violation of Section 8 of Article I of the Constitution of the United States, although it imposes a tax on the privilege of doing business within the state measured in part by net income derived from interstate and foreign business caried on therein;

(11) That said act does not deny to petitioners the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, although it imposes a tax for the privilege of doing business within the state measured, in part, by net income derived by the taxpayer from interstate and foreign business carried on therein;

(12) That said act does not deprive the petitioners of their property without due process of law and without just or any compensation, in violation of the Fourteenth Amendment to the Constitution of the United States, although it [fol. 6] imposes a tax on the privilege of doing business within the state, measured, in part, by income derived from interstate and foreign business carried on therein;

(13) That said act is valid when applied to interstate and foreign transportation business;

(14) That said act is valid when applied to include, within the measure thereof, income from interstate and foreign transportation business.

(15) That said act does not deny to petitioners the equal protection of the laws, although, as a condition of the right to do intrastate business, it imposes a tax measured in part by income from interstate and foreign business carried on within the boundaries of the state.

Prayer for Reversal

For which errors the petitioners, Matson Navigation Company, The Oceanic Steamship Company and Matson

Terminals, Inc., pray that the said judgment of the Supreme Court of the State of California, dated March 27, 1935, in the above-entitled cause, be reversed, and a judgment rendered in favor of the petitioners, and that the petitioners be awarded their costs.

[fol. 7] Dated: June 17th, 1935.

Herman Phleger, Maurice E. Harrison, Howard J. Linn, Gregory A. Harrison, Attorneys for Petitioners.

[fol. 8] [File endorsement omitted.]

[fol. 9] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed June 17, 1935

The Appellants in the above-entitled cause having prayed for an order allowing an appeal in said cause to the Supreme Court of the United States from the judgment made and entered in said cause by the Supreme Court of the State of California on the 27th day of March, 1935, and from each and every part thereof, and having presented their petition for appeal, assignment of errors and prayer for reversal, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and [fol. 10] provided, and the decision of the Supreme Court of the State of California in said cause having been in favor of the validity of the Bank and Corporation Franchise Tax Act of the State of California under the Constitution of the United States, the validity of said act having been drawn in question in said cause upon the ground of its being repugnant to the Constitution of the United States,

It is now here ordered that an appeal be, and the same hereby is, allowed to the Supreme Court of the United States from the Supreme Court of the State of California in the above-entitled cause, as provided by law;

And it is further ordered that the Clerk of the Supreme Court of the State of California shall prepare and certify a transcript of the record, proceedings and judgment in this

cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within sixty (60) days of this date;

And it is further ordered that the amount of the cost and supersedeas bond on said appeal herein be, and the same hereby is, fixed in the sum of $39,274.34.

Dated: June 17, 1935.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[fols. 11-13] Citation in usual form showing service on H. H. Linney, filed June 17, 1935, omitted in printing.

[fol. 14] [File endorsement omitted.]

[fol. 15] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER STAYING PROCEEDINGS—Filed June 21, 1935

The appellants in the above-entitled suit having filed therein their petition for an order allowing appeal to the Supreme Court of the United States, together with their assignment of errors and prayer for reversal, and having obtained an order allowing said appeal, and the amount of the cost and supersedeas bond on said appeal having been fixed in the sum of $39,274.34, and the appellants having filed in said suit a good and sufficient cost and supersedeas bond duly approved in said sum.

It is hereby ordered that all further proceedings in the [fol. 16] above-entitled suit be and the same hereby are suspended and stayed until the final determination of said appeal by the Supreme Court of the United States.

Dated: June 21st, 1935.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[fol. 17] Due service and receipt of a copy of the within is hereby admitted this 21st day of June, 1935. U. S. Webb by H. H. Linney, Attorney for Respondents.

[fol. 18] [File endorsement omitted]

[fol. 19] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO CONTENTS OF TRANSCRIPT OF RECORD—Filed June 21, 1935

It is hereby stipulated that the transcript of record to be filed in the Supreme Court of the United States, pursuant to the appeal heretofore allowed herein, shall include the following:

(1) Petition for Writ of Review.

(2) Order for Issuance of Writ of Review.

H. P., M. E. H., G. A. H., H. J. F., U. S. W., H. H. L.

(4) Record of State Board of Equalization, certified to the Supreme Court of the State of California, pursuant to writ of review, including:

[fol. 20] (a) Certificate of the Secretary of the State Board of Equalization;

(b) Appeal to the State Board of Equalization, including Consolidated Return attached to the Appeal as Exhibit "A," Notice of Additional Franchise Tax Proposed to be Assessed, attached to the Appeal as Exhibit "B," and Notice of Action of Franchise Tax Commissioner upon Taxpayer's Protest attached to the Appeal as Exhibit "C";

(c) Minutes of the State Board of Equalization upon the hearing of the Appeal;

(d) Opinion of the State Board of Equalization;

(e) Order of the State Board of Equalization sustaining the action of the Franchise Tax Commissioner.

(5) Stipulation as to Facts.

(6) Opinion of the Supreme Court of the State of California.

(7) Minute order of the Supreme Court of the State of California affirming the order of the State Board of Equalization;

(8) Petition for Rehearing;

(9) Order of the Supreme Court of the State of California denying petition for rehearing;

(10) Petition for Appeal, Assignment of Errors and Prayer for Reversal;

(11) Statement as to Jurisdiction on Appeal;

(12) Order Allowing Appeal;

[fol. 21] (13) Notice under Rule 12, Paragraph 2, Rules of the Supreme Court of the United States, and Proof of Service;

(14) Citation;

(15) Supersedeas and Cost Bond;

(16) Stay of Proceedings.

(17) Stipulation as to Contents of Transcript of Record.

Dated: June 21, 1935.

Herman Phleger, Maurice E. Harrison, Gregory A. Harrison, Howard J. Finn, Attorneys for Appellants.

U. S. Webb, Attorney General of the State of California, by H. H. Linney, Deputy Attorney General.

[fols. 22-27] Supersedeas bond on appeal for 39,274.34 approved and filed June 21, 1935, omitted in printing.

[fol. 28] [File endorsement omitted]

[fol. 29] IN SUPREME COURT OF CALIFORNIA

No. —

MATSON NAVIGATION COMPANY, a Corporation, THE OCEANIC STEAMSHIP COMPANY, a Corporation, and Matson Terminals, Inc., a Corporation, Petitioners,

vs.

STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA, John C. Corbett, Fred E. Stewart, R. E. Collins, H. G. Cattell and Ray L. Riley, the Members of said State Board of Equalization, and Charles J. McColgan, Franchise Tax Commissioner of the State of California, Respondents

PETITION FOR WRIT OF REVIEW—Filed Mar. 29, 1934

To the Honorable, the Supreme Court of the State of California:

The above-named Petitioners, Matson Navigation Company, The Oceanic Steamship Company and Matson Terminals, Inc., respectfully pray for a writ of review of this court by this verified petition, and in this behalf set forth [fol. 30] the following causes for the issuance of said writ:

I

At all times herein mentioned said Respondents John C. Corbett, Fred E. Stewart, R. E. Collins, H. G. Cattell and Ray L. Riley were, and still are, the duly appointed, qualified and acting members of the State Board of Equalization of the State of California. At all times herein mentioned Charles J. McColgan was, and still is, the duly appointed, qualified and acting Franchise Tax Commissioner of the State of California.

II

Your Petitioners now are and at all times herein mentioned have been corporations duly organized and existing under and by virtue of the laws of the State of California.

III

Your Petitioner Matson Navigation Company was, during the period from January 1, 1930, to December 31, 1930, inclusive, now is, and at all other times herein mentioned has been, engaged in the operation of vessels transporting passengers and freight between ports on the Pacific Coast of the United States and ports in the Territory of Hawaii.

IV

Your Petitioner The Oceanic Steamship Company was, during the period from January 1, 1930, to December 31, 1930, inclusive, now is, and at all other times herein mentioned has been, engaged in the operation of vessels trans- [fol. 31] porting passengers and freight between ports on the Pacific Coast of the United States and ports in the Territory of Hawaii, the South Seas, Australia and New Zealand.

V

During said period from January 1, 1930, to December 31, 1930, inclusive, your Petitioners derived from the trans-

portation of passengers and freight as aforesaid, a net income in the amount of $2,526,148.22; that 22.2% of said amount of $2,526,148.22 was derived from the transportation of passengers and freight initiated at ports of the State of California and carried to ports in the Territory of Hawaii, the South Seas, Australia and New Zealand.

VI

On or about March 16, 1931, your Petitioners filed with the State Franchise Tax Commissioner a consolidated franchise tax return for the year 1931 pursuant to the provisions of Section 13 of the Bank and Corporation Franchise Tax Act and that said return showed a taxable net income for the calendar year 1930 of $730,357.81, and a tax due of $12,845.30; that at the time of filing said return your Petitioners paid to said Commissioner by a check payable to the State Treasurer the sum of $6,422.65, being one-half of the tax shown to be due by said return; that on or about September 15, 1931, your Petitioners paid to said Commissioner by a check payable to the State Treasurer the sum of $6,422.65, being the remaining one-half of the tax shown [fol. 32] to be due by said return.

VII

In said return, said sum of $2,526,148.22, representing income derived from the transportation of passengers and freight between ports of the Pacific Coast of the United States and ports in the Territory of Hawaii, the South Seas, Australia and New Zealand, as aforesaid was not included in net income of the Petitioners for the purpose of computing said tax; on or about March 5, 1932, said Commissioner mailed to your Petitioners a notice Number 15951, a true copy of which is hereto attached marked Exhibit "A", wherein and whereby said Commissioner proposed to assess upon your Petitioners an additional tax in the amount of $101,045.92; said proposed assessment was based upon the allocation to business done within this state of the entire net income of your Petitioners, including the said amount of $2,526,148.22, representing net income derived from the transportation of passengers and freight between ports on the Pacific Coast of the United States and ports in the Territory of Hawaii, the South Seas, Australia and New Zealand.

VIII

Within sixty days after the date of said notice your Petitioners filed with said Commissioner a written protest, under oath, against said proposed assessment of said additional tax; that on December 23, 1932, a hearing upon said [fol. 33] protest was had before said Commissioner; that on November 23, 1932, said Commissioner mailed to your Petitioners a notice of his final action upon said protest, a true copy of which said notice is hereto annexed marked Exhibit "B". That by said final action said Commissioner assessed upon your Petitioners an additional tax in the amount of $19,637.71. Said assessment was based upon the allocation to business done within this state of 22.2% of all net income derived by your Petitioners from transportation of passengers and freight between ports on the Pacific Coast of the United States and ports in the Territory of Hawaii, the South Seas, Australia and New Zealand.

IX

On December 23, 1932, your Petitioners filed with the State Board of Equalization an appeal from said final action of said Commissioner. That on February 15, 1934, said Board ordered that said action of said Commissioner be sustained.

X

The Commissioner and the Board in assessing said additional taxes have acted in violation of the terms of the said Bank and Corporation Franchise Tax Act and beyond the authority conferred thereby, in that said additional taxes are not measured by net income from business done within the State or by net income from business allocated to the State of California under the terms of said Act. The said order of the Commissioner and said order of the Board are [fol. 34] unlawful and void, in that therein and thereby the Commissioner and the Board have assessed a tax upon, and measured by, the interstate and foreign business of the Taxpayers and upon income therefrom and said Act does not authorize any tax upon or measured by said interstate and foreign business of the Taxpayers or the income therefrom.

XI

Said order of the Board and said assessment are unconstitutional and void, in that the said order and assessment are based upon a construction of said Bank and Corporation Franchise Tax Act that the Commissioner and the Board are thereby authorized to impose upon the Taxpayers a tax upon the privilege of doing interstate and foreign business and measured by the income therefrom, and that if so construed the said Act violates the provisions of Section 8 of Article I of the Constitution of the United States and is therefore unconstitutional and void.

XII

Said order and said assessment are unconstitutional and void, in that they deny the Petitioners the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, and lack uniformity in their operation, in violation of Section 11 of Article I of the Constitution of California.

[fol. 35]

XIII

Said assessment and said order are unconstitutional and void, in that the said assessment and order deprive the Petitioners of their property without due process of law and without just or any compensation, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

XIV

Said assessment and said order are unconstitutional and void because the same are in violation of the provisions of Section 15 of Article XII of the Constitution of the State of California.

Wherefore, your Petitioners pray:

(1) That a writ of review issue out of this Court to said Board and said John C. Corbett, Fred E. Stewart, R. E. Collins, H. G. Cattell and Ray L. Riley, demanding them to certify fully to this Court at a specified place and time, not later than thirty (30) days after the date of the issuance of said writ, the records and proceedings in said cause that

the same may be inquired into and determined by this Court;

(2) That said matters and records be fully heard by this Court and that it be ordered, adjudged and decreed that said order made by said Board of Tax Appeals be annulled, vacated and set aside;

[fol. 36] (3) That pending said action by this Court, the Respondents be commanded and required to desist from further proceedings in said cause and to refrain from assessing or collecting the said additional assessment, or any portion thereof, and that all proceedings in connection therewith be stayed;

(4) That your Petitioners recover their costs herein and for such other and further relief as may be meet and just in the premises.

Respectfully submitted, Matson Navigation Company, by F. A. Bailey. The Oceanic Steamship Company, by F. A. Bailey. Matson Terminals, Inc., by F. A. Bailey, Petitioners. Brobeck, Phleger & Harrison, Attorneys for Petitioners.

[fol. 36a] *Duly sworn to by F. A. Bailey. Jurat omitted in printing.*

[fol. 37] EXHIBIT "A" TO PETITION

No. 15951

State of California

Office of Franchise Tax Commissioner

Sacramento

Notice of Additional Franchise Tax Proposed to Be Assessed

Date: March 5, 1932.

Matson Navigation Co.,
215 Market Street,
San Francisco, Calif. 32463.

Bank and Corporation Franchise Tax return for taxable year ended December 31, 1930, as transmitted by the above

corporation has been examined and the correct amount of the tax determined by the Commissioner, and it is proposed to assess an additional tax in the amount of $101,045.92. The details of the proposed additional assessment and of computing said tax are set forth below.

Amount of tax must be transmitted to the Franchise Tax Commissioner by certified check or money order payable to the State Treasurer. Interest must be added at six per cent per annum from the due date, March 15, 1931, to the date of payment.

Item	43	Net income both within and without the State from Schedule A	$3,256,506.03
	25	Interest federal, state and municipal bonds: Section 6 provides that gross income shall include gains, profits, and income	
[fol. 38]		derived from the business of whatever kind and nature	186,150.16
		Revised net income allocating 100% to Calif.	$3,442,656.19
Item	44	4%	137,706.24
	45	Offset	17,051.05
	46		120,655.19
	47	Add: 4% of offset	682.04
		Total tax assessed	121,337.23
		Less tax liability assessed:	
		Acknowledgment No. 17355 $12,845.30	
		Proposed assessment, No. 13255 7,446.01	20,291.31
		Additional tax	$101,045.92

This notice of additional franchise tax proposed to be assessed is forwarded to the taxpayer whose name appears hereon in accordance with the provisions of the Bank and Corporation Franchise Tax Act, Section 25 (see reverse side of this notice).

Interest as called for above must be included in remittance.

Chas. J. McColgan, Franchise Tax Commissioner,
by Richard P. Lowe.

GEZ.

[fol. 39] EXHIBIT "B" TO PETITION

State of California

Office of Franchise Tax Commissioner

Sacramento

Notice of Action of Franchise Tax Commissioner Upon Taxpayer's Protest

Dated at Sacramento, California, November 23, 1932.

Matson Navigation Co.
215 Market Street,
San Francisco, California. 32463.

You are hereby notified that pursuant to the terms of Section 25 of the Bank and Corporation Franchise Tax Act and the protest which you filed complaining of the computation and levy of your tax by the Franchise Tax Commissioner under said act as disclosed by return filed for the taxable year beginning January 1, 1930 and ended December 31, 1930, as set forth in Notice of Additional Franchise Tax Proposed to be Assessed, No. 15951, dated March 5, 1932, in the amount of $101,045.92.

The computation and levy complained of have been reconsidered by the Franchise Tax Commissioner and he has acted upon said protest as follows:

[fol. 40] In view of the evidence adduced at conference and hearings, liability is determined in accordance with the following computation:

Total tax assessed		$39,929.02
Less Acknowledgment No. 17,355	$12,845.30	
Proposed assessment No. 13,255	7,445.01	
		20,291.31
Revised additional tax		$19,637.71

Interest has accrued on the deficiency at the rate of 6% per annum from March 15, 1931.

Yours very truly, Chas. J. McColgan, Franchise Tax Commissioner; Chas. A. Temple, Auditor.

CAT:EB.

[fol. 41] IN SUPREME COURT OF CALIFORNIA

In Bank

[Title omitted]

ORDER GRANTING WRIT OF REVIEW—Filed April 23, 1934

By the COURT:

Let a writ of review issue in the above-entitled matter, returnable before this court in bank, at its courtroom in San Francisco, on Tuesday, July 17th, 1934, at ten o'clock A. M.

Dated: April 23, 1934.

Seawell, Acting Chief Justice.

[File endorsement omitted.]

[fol. 42] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

[Title omitted]

Record of State Board of Equalization—Filed July 13, 1934

[fol. 43] BEFORE STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA

SECRETARY'S CERTIFICATE

STATE OF CALIFORNIA,
County of Sacramento, ss:

I, Dixwell L. Pierce, do hereby certify that I am the duly appointed, qualified and acting Secretary of the State

Board of Equalization, and that the attached is a full, true and correct copy of the proceedings had before the State Board of Equalization in the matter of the appeal of the Matson Navigation Co., The Oceanic Steamship Company and Matson Terminals, Inc., from the action of the Franchise Tax Commissioner upon their protest to a proposed assessment of an additional tax of $19,637.71 under the Bank and Corporation Franchise Tax Act (Chap. 13, Stats. of 1929 as amended) for the year 1931 based upon their returns for the calendar year ended December 31, 1930.

In witness whereof, I have hereunto affixed my signature and the seal of said Board, at Sacramento, California, this 18th day of May, 1934.

Dixwell L. Pierce, Secretary, State Board of Equalization. (Seal.)

[fol. 44] Received December 23, 1932. State Board of Equalization

BEFORE STATE BOARD OF EQUALIZATION

In the Matter of the Appeal of MATSON NAVIGATION COMPANY, THE OCEANIC STEAMSHIP COMPANY, and MATSON TERMINALS, INC., from Action of the Franchise Tax Commissioner upon Protest Against Determination of Franchise Taxes for Taxable Year 1930

APPEAL

To the State Board of Equalization:

Matson Navigation Company, The Oceanic Steamship Company and Matson Terminals, Inc., corporations duly organized and existing under and pursuant to the laws of the State of California, hereby appeal from the action of the Franchise Tax Commissioner upon the protests of appellants against the determination by such Commissioner of franchise taxes of appellants for the taxable year 1930, and in support thereof allege:

I

On or about March 16, 1931, appellants filed with the State Franchise Tax Commissioner a consolidated fran-

[fol. 45] chise tax return pursuant to the provisions of Section 13 of the Bank and Corporation Franchise Tax Act, a true copy of which said return is hereto annexed, marked Exhibit "A".

II

Attached hereto and marked Exhibit "B" is a true copy of an assessment notice of said Franchise Tax Commissioner numbered 15951, dated March 5, 1932, wherein and whereby an additional tax was assessed upon appellants of $101,045.92. Within sixty days after the date of said assessment appellants filed a written protest under oath against the levy of said proposed additional tax. On November 23, 1932, said Franchise Tax Commissioner mailed to appellants notice of his action upon said protest, which said notice is in the form attached hereto, marked Exhibit "C", and by said final action said Franchise Tax Commissioner assessed additional taxes upon appellants in the sum of $19,637.71.

III

Said assessment of $19,637.71 was and is invalid, illegal and erroneous, unfair and without any foundation whatever, and in violation of Section 10 of said Act.

[fol. 46] IV

Appellants further object and protest against the said assessment upon the ground that same is not determined or measured by that portion or any portion of the net income of appellants which is done within the State of California, and the further ground that the said assessment is based upon an allocation to appellants' net income from business done by appellants within the State of California, which allocation is not upon the basis of sales, purchases, expenses of manufacture, particular value and situs of tangible property or by reference to any of said factors or by any method of allocation which is fairly calculated to assign to the State of California a portion of the net income of appellants reasonably attributable to business done within said State of California and/or to avoid subjecting the taxpayers to double taxation.

V

Appellants further object and protest against said assessment upon the ground that said notice of additional franchise tax proposed to be assessed, No. 15951 is null and void for the reason that it does not set forth the details of the proposed additional assessment.

VI

Appellants further object and protest against said as- [fol. 47] sessment upon the ground that the same is unconstitutional and void under the provisions of the Constitution of the United States.

VII

Appellants further object and protest against said assessment upon the ground that the same is unconstitutional and void under the provisions of the Constitution of the State of California.

VIII

Appellants further object and protest against said assessment upon the ground that the same is unconstitutional and void under the provisions of Section 8 of Article I of the Constitution of the United States.

IX

Appellants further object and protest against said assessment upon the ground that the same is unconstitutional and void under the provisions of Section 15 of Article XII of the Constitution of the State of California.

Wherefore, appellants appeal from the action of said Franchise Tax Commissioner upon said protest and for a determination of the franchise tax for the calendar year 1930, and that said additional assessment be declared [fol. 48] void.

Matson Navigation Company, The Oceanic Steamship Company, Matson Terminals, Inc., Appellants, by Brobeck, Phleger & Harrison, Their Attorneys.

(Here follows photolithographs, side folios 49 and 50.)

FORM 108

BANK AND CORPORATION FRANCHISE TAX RETURN

This return must be filed with the STATE FRANCHISE TAX COMMISSIONER, SACRAMENTO, CALIFORNIA, within two months and fifteen days after the close of the taxable year

Certified check or money order payable to State Treasurer for one-half of the tax must accompany this return

EXHIBIT "A"

MATSON NAVIGATION COMPANY
215 MARKET STREET
SAN FRANCISCO, CALIFORNIA

(Exact Corporate Title)

(Mail Address)

To Be Filled in by Taxpayer

Total tax per Item 48 or 50 (minimum tax $25) $	
Amount remitted herewith $	

(LEAVE THESE SPACES BLANK)

R	A
OB	RA
CV	
PE	

(1) Date of incorporation Feb. 9, 1901
(2) Under laws of California
(3) Kind of business Transportation - Water
(4) Began business in California February 1901
(5) Is this a consolidated return? Yes
(6) If the income of this corporation is included on the return of another corporation, give name of such corporation

Copy Statement of Net Income from Corporation Federal Income Tax Return for the calendar year 1930 or the fiscal year commencing ..... and ending .....

(THE FOLLOWING MUST BE COPIED FROM LINES 1 TO 24, INCLUSIVE, OF THE RETURN FILED WITH THE FEDERAL GOVERNMENT COVERING THE ABOVE FISCAL PERIOD AND SHOULD BE SUPPORTED BY COPIES OF SCHEDULES WHICH ACCOMPANIED THAT RETURN)

SCHEDULE A

Item No.	GROSS INCOME		
1.	Gross Sales from Trading or Manufacturing, Less Returns and Allowances		$
2.	Less Cost of Goods Sold:		
	(a) Inventory at close of preceding year	$	
	(b) Merchandise bought for sale		
	(c) Cost of manufacturing or otherwise producing goods (Submit copy of Schedule A, Federal return)		
	(d) Total lines (a), (b), and (c)	$	
	(e) Less inventory at end of year		
3.	Gross Profit from Trading or Manufacturing (Item 1 minus Item 2)		$
4.	Gross Profit from Operations Other Than Trading or Manufacturing. (State source of income)		
	(a)		
	(b) SCHEDULES ATTACHED		
	(c)		
5.	Interest on Bank Deposit, Notes, Mortgages, and Corporation Bonds		
6.	Rents		
7.	Royalties		
8.	Profit from Sale of Real Estate, Stocks, Bonds, and other Capital Assets (Submit Schedule)		
9.	Dividends on Stock of Domestic Corporations		
10.	Other Income (including dividends received on stock of foreign corporations).		
	(a)		
	(b)		
	(c)		
11.	TOTAL INCOME IN ITEMS 3 TO 10		$
	DEDUCTIONS		
12.	Compensation of Officers (Submit Schedule)		$
13.	Rent on Business Property		
14.	Repairs		
15.	Interest		
16.	Taxes (Submit Schedule)		
17.	Losses (Submit Schedule)		
18.	Bad Debts (Submit Schedule)		
19.	Dividends (Submit Schedule)		
20.	Depreciation (resulting from exhaustion, wear and tear, or obsolescence) (Submit Schedule)		
21.	Depletion of Mines, Oil and Gas Wells, Timber, etc. (Submit Schedule)		
22.	Other Deductions Not Reported Above. (Explain below, or on separate sheet):		
	(a) Salaries and wages. (Not included in Items 2, 12, or 14 above)		
	(b) Net loss for prior year		
	(c)		
	(d)		
	(e)		
	(f)		
23.	TOTAL DEDUCTIONS IN ITEMS 12 TO 22		
24.	NET INCOME (Item 11 minus Item 23)		$ 49

18A

Net income, Item 24, corporation federal income tax return brought forward ____ $

ADJUSTMENTS

(To conform to California statute)

ADD

Interest on U. S. Government Securities $186,150.16 not Included

25. Interest received from Federal, State, Municipal and Other Bonds, not included in Item 7, above ____ $

26. California state franchise tax paid under Const. Art. XIII, Sec. 14 (*d*) ____

27. California state franchise tax paid under Const. Art. XIII, Sec. 16 (Bank and Corporation Franchise Tax Act) ____

28. Foreign and domestic income and profits taxes paid, included in Item 16, above ____

29. Net loss for prior year, Item 22 (*b*) above ____ SCHEDULE ATTACHED

30. Excess of proceeds of life insurance over premiums paid (Sec. 9 (*c*)) (Submit Schedule) ____

31. Deductions disallowed and/or income added by Bureau of Internal Revenue, U. S. Treasury Department, if any, for the calendar year ended ____ (Insert date) (If more than one year submit detail) ____

32. Other additions not reported above:

(*a*) ____

(*b*) ____

(*c*) ____

33. TOTAL OF ITEMS 24 to 32, inclusive ____ $

DEDUCT

34. Federal income taxes accrued during the period covered by this return ____ $

35. Additional income tax assessed by Bureau of Internal Revenue, U. S. Treasury Department, if any, for the calendar or fiscal year ended ____ (Insert date) (If more than one year submit detail)

36. Additional depreciation based on January 1, 1928, value (Submit detailed Schedule) ____

37. Additional depletion based on January 1, 1928, value (Submit detailed Schedule) ____ SCHEDULE ATTACHED

38. Other deductions not reported above:

(*a*) ____

(*b*) ____

39. TOTAL DEDUCTIONS (Items 34 to 39, inclusive) ____ $

40. Net income for State purposes—exclusive of dividends added at Item 42 (Deduct Item 39 from Item 33) ____ $

41. Net income, exclusive of dividends received, allocated to State, from Schedule C, line (*d*) ____ % of $ ____ (To be used only by banks and corporations whose entire business is not done within the State)

42. Dividends received from income arising out of business done without this State. (Submit Schedule) (See Instructions)

43. NET INCOME FOR STATE PURPOSES (Item 40 plus 42, or 41 plus 42 as appropriate) SCHEDULE C ATTACHED ____ $ 730,357.81

SCHEDULE B—COMPUTATION OF TAX

44. Tax—4% of Item 43 ____ 29,214.31

45. OFFSET ALLOWANCE (See Instructions)

(*a*) 10% of real estate taxes paid in California ____ $ 4,771.80

(*b*) 100% of personal property taxes paid in California ____ $ 12,279.25

(*c*) Total of tax (*a*) and (*b*) ____ 17,051.05

(*d*) Offset allowable—that portion of (*c*) not in excess of 75% of Tax, Item 44 ____ $ 17,051.05

46. (*e*) Tax after offset allowance ____ $ 12,163.26

47. (*f*) Add: 4% of (*d*) (See Instructions) ____ 682.04

48. (*g*) Total tax (minimum tax $25) ____ $ 12,845.30

One-half of total tax payable with this return. Balance of tax due and payable on or before the 15th day of the ninth month following close of the taxable year.

49. (*b*) Second year liability (Applicable only to new corporations filing first return) (See Instructions) ____ $

50. (*i*) Total —48 and 49 ____ $ 12,845.30

[fol. 51] Consolidated Return

Parent Company: Matson Navigation Company, 215 Market Street, San Francisco

Subsidiaries: The Oceanic Steamship Company, Matson Terminals, Inc., 215 Market Street, San Francisco

[fol. 52] Allocation and Adjustment Schedules

Schedules A & C—Net income, adjustments, eliminations, and allocation of net income.

Item 14a—Allocation of repairs.
Item 16a— " of taxes.
Item 20a— " of depreciation.
Item 26a—Dividends from income out of business done without the State.
Item 27 —Corporation franchise taxes.
Item 38a—Other deductions.
Item 47 —Analysis of taxes used as offset allowance. Analysis of eliminations.

(Here follows table, side folio 53.)

[fol. 53]

Matson Navigation Company

Schedule A

Net Income

Adjustments

Schedule C—Allocation of Income

Gross Income	Matson Navigation Company	The Oceanic Steamship Company	Matson Terminals, Inc.	Elimin. See Analysis	Consolidated	Adjustments Item No.	Adjustments Amount	Total	Total Without State	Net income for State Purposes
4. Gross Profit from Operations:										
(a) Net Vessels Earnings	$4,596,121.84	1,074,767.57		26,045.22	5,696,934.63			5,696,934.63	5,696,934.63	
(b) Stevedoring & Car Unload.			511,479.07		511,479.07			511,479.07	438,520.44	72,958.63
5. Interest	311,050.23	30,400.99	219.54		341,670.76			341,670.76		341,670.76
9. Dividends	753,807.20			(280,000.00a)	473,807.20	(26)	(313,250.00)	160,557.20		160,557.20
10. Other Income	630,108.77	57,136.83	2,366.34	(132,308.47)	557,303.47			557,303.47		557,303.47
11. Total Income	6,291,088.04	1,162,305.39	514,064.95	(386,263.25)	7,581,195.13		(313,250.00)	7,267,945.13	6,135,455.07	1,132,490.06
Deductions										
12. Compensation of Officers	119,646.25				119,646.25			119,646.25	101,002.97	B18,643.28
14. Repairs	319,485.64	54,310.07	33,295.50		407,091.21			407,091.21	404,822.67	2,268.54
16. Taxes	23,393.17	8,919.95	2,591.61	46,735.24	81,639.97	(27)	(16,696.85)	64,943.12	10,636.15	54,306.97
17. Losses	293,949.45	34,426.90			328,376.35			328,376.35	328,376.35	
18. Bad Debts	6,831.16				6,831.16			6,831.16	6,831.16	
19. Dividends	(753,807.20)			(280,000.00a)	473,807.20	(26)	(473,807.20)			
20. Depreciation	1,107,667.30	178,608.97	38,088.14		1,324,364.41			1,324,364.41	1,271,624.27	52,740.14
22. Other Deductions:										
(c) Ordin. & Neces. Expenses	1,158,958.29	176,941.06	140,846.60	(152,998.49)	1,323,747.46	(38a)	13,997.50	1,337,744.96	1,129,297.57	B208,447.39
(d) Loss on Sale of Autos			634.90		634.90			634.90	634.90	
Federal Taxes						(36)	421,806.74	421,806.74	356,080.81	B65,725.93
23. Total Deductions	3,783,738.46	453,206.95	215,456.75	(386,263.25)	4,066,138.91		(54,699.81)	4,011,439.10	3,609,306.85	402,132.25
24. Net Income	2,507,349.58	(709,098.44	298,608.20		3,515,056.22		(258,550.19)	3,256,506.03	2,526,148.22	730,357.81

(a) Inter-Company Dividend.

B Allocated on basis of percentage of Income Within and Without the State:

Income Without State	$6,135,455.07	84.418%
Income Within State	1,132,490.06	15.582%
Total	7,267,945.13	

Note.—Items within ( ) should be red ink.

[fol. 54] Matson Navigation Company
Item 14a
Allocation of Repairs

	Total	Total without State	Deduction for State purposes
Matson Navigation Co.	$319,485.64	319,485.64	
The Oceanic Steamship Co.	54,310.07	54,310.07	
Matson Terminals, Inc.:			
San Francisco	15,903.67	13,635.13	2,268.54*
Honolulu	10,212.94	10,212.94	
Hilo	3,921.01	3,921.01	
Seattle	3,242.68	3,242.68	
Kukuihaele	15.20	15.20	
Total Matson Terminals, Inc.	33,295.50	31,026.96	2,268.54
Total	407,091.21	404,822.67	2,268.54

*Total Revenue from Stevedoring and Car Labor $511,479.07
Revenue from Business done Within the State 72,958.63

Percentage used as Basis for Allocation 14.262.24

[fol. 55] Matson Navigation Company
Item 16a
Taxes

Matson Navigation Co.	Taxes accrued	California taxes paid	Deferred to year 1931	Taxes expense
California:				
San Francisco	$80,748.91			
Crockett	1,055.11			
Los Angeles	29.12			
Licenses	177.50			
Stamp Taxes	507.73			
	82,518.37	58,273.49	29,364.97	53,153.40
Outside State	726.38			726.38
Franchise Tax	16,248.63			16,248.63
Total Matson Nav. Co.	99,493.38		29,364.97	70,128.41
The Oceanic Steamship Co.				
California	917.23	917.23	458.65	458.58
Stamp Taxes	291.75			291.75
	1,208.98			750.33
Outside State	10,763.88		2,619.26	8,144.62
Franchise Tax	25.00			25.00
Total Oceanic	11,997.86		3,077.91	8,919.95
Matson Terminals, Inc.				
California	806.48	806.48	403.24	403.24
Franchise Tax	423.22			423.22
Outside State	1,765.15			1,765.15
Total Matson Terminals	2,994.85		403.24	2,591.61
Total	114,486.09	59,997.20	32,846.12	81,639.97
Deduct Franchise Taxes.				16,696.85
				64,943.12
In State			54,306.97	
Outside State			10,636.15	

[fol. 56] Matson Navigation Company

Item 26

Dividends from Income Out of Business Done Without This State

American Factors, Ltd.			$55,200.00
Inter-Island Steam Navigation Co.			69,000.00
Theo. H. Davies & Co., Ltd.			28,430.00
Paauhau Sugar Plantation Co.			6,500.00
Merritt, Chapman & Scott			1,427.20
Total			160,557.20
Total Dividends Item 19		753,807.20	
Less:			
Intercompany	280,000.00		
Item 26 above	160,557.20		
		440,557.20	
Adjustment Schedule C (26)		313,250.00	

Item 27

Corporation Franchise Tax

Matson Navigation Company	$16,248.63
Matson Terminals, Inc.	423.22
The Oceanic Steamship Co.	25.00
Total	16,696.85

Item 38a

Other Deductions

Contributions	$13,997.50

[fol. 57] Matson Navigation Company

Item 47

Analysis of Taxes Used As Offset Allowance

	Total tax paid	Real estate	Personal property
Matson Navigation Company:			
San Francisco County:			
Tax Bill #1520 (1920–31 Roll)	$20,809.03	20,809.03	
#1530 (1929–30 Roll)	18,822.56	18,822.56	
#1155 (1929–30 Roll)	2,682.56	2,682.56	
#1126 (1930–31 Roll)	2,750.63	2,750.63	
#1531 (1929–30 Roll)	864.83	864.83	
#1532 (1929–30 Roll)	733.23	733.23	
Launch "Barnacle":			
Receipt #22,927	7.88		7.88
Other Personal Property:			
Receipt #71,462	10,518.54		10,518.54
Contra Costa County:			
Tax Bill #51,318	1,055.11	1,055.11	
Los Angeles:			
Tax Bill #155,204	29.12		29.12
The Oceanic Steamship Co.:			
San Francisco County:			
Receipt #72,878	917.23		917.23
Matson Terminals, Inc.:			
San Francisco County:			
Receipt #74,544	806.48		806.48
Total	59,997.20	47,717.95	12,279.25

[fol. 58] Matson Navigation Company

Schedules

Schedule D—Balance Sheet.
E—Reconciliation of net income and analysis of changes in surplus.

Item 10 a—Other Income.
12 —Compensation of Officers.
14 —Repairs.
16 —Taxes.
17 —Losses.
18 —Bad Debts.
19 —Dividends.
20 —Depreciation.

[fol. 59] Matson Navigation Company
Schedule D
Balance Sheets

Assets	Jan. 1, 1930	Dec. 31, 1930
Cash	$5,919,444.46	6,139,107.23
Accounts & Notes Receivable	1,059,630.63	1,958,363.56
United States Government Bonds	3,980,411.25	3,485,163.88
Corporation Bonds	502,500.00	1,002,500.00
Stocks of Other Companies	6,823,788.57	7,893,588.57
Stores	155,443.27	155,631.41
Deferred Accounts	197,586.27	603,801.47
Real Estate	497,000.20	497,000.20
Depreciable Assets	16,684,574.43	15,130,617.19
Total Assets	35,820,379.08	36,865,773.51
Liabilities		
Indebtedness	1,163,346.12	575,410.76
Federal Taxes Accrued	366,990.06	301,000.00
Deferred Credits	.....	494,359.44
Reserve for Marine Insurance	1,269,691.16	1,390,565.66
Protection & Indemnity Ins. Reserve	132,715.47	97,202.83
Reserve for Major Repairs	277,644.92	610,621.79
Reserve for Cargo Loss & Damage	28,433.58	44,584.66
Pension Fund Reserve	50,000.00	73,195.00
Capital Stock	24,451,800.00	24,452,100.00
Stock Scrip Certificates	566.68	266.67
Paid in Surplus, Stock Premiums	62,500.00	62,500.00
Appreciation Surplus	3,044,532.15	3,058,884.51
Earned Surplus	4,972,158.94	5,705,082.19
Total Liabilities	35,820,379.08	36,865,773.51
Analysis of Depreciable Assets		
Net Value, Item 20	14,190,042.28	13,141,464.59
Accounted Appreciation (Net)	3,044,532.15	3,058,884.51
	17,234,574.43	16,200,349.10
Less Reserve for Obsolescense—Vessels Cost	550,000.00	1,069,731.91
Depreciable Assets, Above	16,684,574.43	15,130,617.19

[fol. 60] Matson Navigation Company

Schedule E

Reconciliation of Net Income and Analysis of Changes in Surplus

1.	Net Income from Item 24		$2,507,349.58
2.	Non-Taxable Income:		
	(c) Interest on United States obligations		186,150.16
	(j) Dividends Deductible		753,807.20
4.	Charges against Reserve for Contingencies:		
	(a) Major Repairs		319,485.64
	(b) Marine Insurance		106,177.64
	(c) Protection & Indemnity Insurance		139,277.89
	(d) Cargo Loss & Damage		48,493.92
	(e) Pension Fund		26,805.00
	Total of lines 1 to 4 inclusive		4,087,547.03
	Deduct:		
13.	(a) Contributions	13,997.50	
	(j) Additions to Reserves for Contingencies		
	(1) Major Repairs	652,462.51	
	(2) Marine Insurance	227,052.14	
	(3) Obsolescence on Vessels Cost	112,891.91	
	(4) Depreciation and Obsolescence on Appreciation	242,487.64	
	(5) Protection & Indemnity Ins.	103,765.25	
	(6) Cargo Loss and Damage	64,645.00	
	(7) Pension Fund	50,000.00	
	(8) Special Depreciation	150,000.00	
		1,617,301.95	
	Less Reserve Additions applicable to Incomplete Voyage, Item 4a	45,150.53	
		1,572,151.42	
	(k) Other Unallowable Deductions		
	(1) Federal Taxes Acct. (Estimate)	301,000.00	1,873,151.42
7.	Net Profit for Year, as Shown by Books		2,214,395.61
8.	Surplus as Shown by Balance Sheet, Dec. 31, 1929		4,972,158.94
9.	Other Credits to Surplus:		
	(a) Appreciation Realized through Operation		242,487.64
10.	Total of Lines 7 to 9 Inclusive		7,429,042.19
15.	Dividends Paid in Cash	1,467,120.00	
16.	Other Debits to Surplus:		
	(a) Obsolescence on Vessels Cost, Years 1928 & 1929, transferred to Reserve for Obsolescence Vessels Cost	256,840.00	1,723,960.00
12.	Surplus at Close of Taxable Year as Shown by Balance Sheet		5,705,082.19

[fol. 61] Matson Navigation Company

Item 10a

Other Income

Commissions	$261,225.58
Trade Discounts	42,204.22
Cafeteria	43,290.12
Miscellaneous	16,858.37
Car Loading	791.33
Matson Net Building	185,300.56
Main Street Building	5,457.04
Tug "Danty" Charter Hire	4,422.50
Discount	22,562.35
Damage Judgment "Mauna Ala"	14,479.43
"Polynesian" publication	13,910.60
Miscellaneous	10,758.28
Insurance Commission Fund	8,848.39
Total	630,108.77

Item 12

Compensation of Officers

W. P. Roth, President	50,000.00
E. D. Tenney, Chairman of the Board	25,000.00
A. C. Dericx, Vice-President	20,000.00
F. A. Bailey, Vice-President	15,000.00
R. P. Hasenauer, Treasurer	6,746.25
A. M. McCarty, Ex-treasurer	2,900.00
Total	119,646.25

[fol. 62] Matson Navigation Company

Item 14—Repairs

S. S. "Malolo"	$127,883.00
"Maui"	7,811.80
"Matsonia"	20,383.11
"Wilhelmina"	13,613.91
"Manoa"	14,464.10
"Manukai"	3,158.96
"Manulani"	19,832.61
"Maunalei"	7,659.66
"Mahukona"	272.67
"Mauna Ala"	14,718.51
"Makiki"	15,679.71
"Maliko"	11,603.82
"Makawao"	11,249.85
"Makua"	10,410.77
"Mala"	8,720.28
"Malama"	6,254.45
"Mana"	5,031.57
"Manini"	8,025.26
"Maunawili"	12,711.60
	319,485.64

Item 16—Taxes

San Francisco Property Taxes		$80,748.91
Corporation Franchise Tax		16,248.63
Crockett Taxes		1,055.11
Hawaiian Islands Taxes		665.21
Stamp Taxes		507.73
Chicago Taxes		34.77
Los Angeles Taxes		29.12
New York "		26.40
Licenses		177.50
		99,493.38
Deduct:		
Taxes included in Departmental Operating Expense	46,735.24	
Deferred to Year 1931	29,364.97	
		76,100.21
Total		23,393.17

[fol. 63] Matson Navigation Company

Item 17—Losses

Marine:

S. S. "Malolo"	$27,030.60
"Maui"	10,619.19
"Matsonia"	4,706.63
"Wilhelmina"	2,683.62
"Manoa"	2,523.79
"Manukai"	5,524.83
"Manulani"	4,961.84
"Maunalei"	1,895.31
"Maunawili"	8,609.51
"Mauna Ala"	16,441.15
"Makiki"	1,275.41
"Maliko"	1,430.96
"Makawao"	7,074.17
"Makua"	781.34
"Mala"	5,045.23
"Malama"	1,029.12
"Mana"	1,176.46

Item 17—Losses—Continued

"Manini"	2,667.53
"Enterprise"	92.80
"Mahukona"	93.75
"Makaweli"	93.35
"Makena"	421.05
Total Marine	106,177.64
Protection & Indemnity Losses & Expense	139,277.89
Claims Paid, Less Salvage	48,493.92
Total	293,949.45

[fol. 64] Matson Navigation Company

Item 18—Bad Debts

Note Receivable, Capt. Ozanne	$6,149.11
Traffic Accounts	362.05
Disputed Passage Authorizations	320.00
Total	6,831.16

Item 19—Dividends Deductible

Matson Terminals, Inc.	280,000.00
Honolulu Oil Corporation, Ltd.	239,000.00
Marine Repairs, Ltd.	74,250.00
Inter-Island Steam Nav. Co.	69,000.00
American Factors Co. Ltd.	55,200.00
Theo. H. Dayies & Co. Ltd.	28,430.00
Paauhau Sugar Plantation Co.	6,500.00
Merritt, Chapman & Scott	1,427.20
Total	753,807.20

[fol. 65]

Matson Navigation Company

Item 20

Depreciation

	Cost Dec. 31, 1929	Cost Dec. 31, 1930	Depreciation Reserve			Net value
			Balance Jan. 1, 1930	1930 depreciation	Balance Dec. 31, 1930	
S. S. "Mololo"	$6,041'804.76	6,046,707.45	622,870.76	302,090.24	924,961.00	5,121,746.45
"Maui"	1,859,187.01	1,859,473.14	1,135,359.70	92,959.35	1,228,319.05	631,154.09
"Matsonia"	1,505,034.31	1,505,034.31	1,119,908.45	75,251.72	1,195,160.17	309,874.14
"Wilhelmina"	905,959.96	905,959.96	893,854.16	12,105.80	905,959.96	.....
"Manoa"	859,203.43	859,203.43	658,113.23	42,960.17	701,073.40	158,130.03
"Manukai"	2,489,516.35	2,489,516.35	1,055,685.01	124,475.82	1,180,160.83	1,309,355.52
"Manulani"	2,459,779.82	2,459,779.82	1,066,593.75	122,988.99	1,189,582.74	1,270,197.08
"Mannalei"	384,211.80	384,211.80	89,661.40	24,382.97	114,044.37	270,167.43
"Mannawili"	360,635.61	360,635.61	86,559.76	22,677.56	109,237.32	251,398.29
"Mauna Ala"	410,236.08	410,236.08	156,412.00	28,199.23	184,611.23	225,624.85
"Makiki"	367,057.63	367,057.63	131,189.82	29,483.48	160,673.30	206,384.33
"Maliko"	383,238.60	383,238.60	87,163.32	32,325.04	119,488.36	263,750.24
"Makawao"	76,602.26	80,800.67	6,601.08	5,469.40	12,070.48	68,730.19
"Makua"	75,940.42	77,140.42	6,443.49	5,839.82	12,283.31	64,857.11
"Mala"	109,729.91	114,470.33	17,525.84	8,278.88	25,804.72	88,665.61
"Malama"	88,090.32	88,415.32	14,683.85	7,257.19	21,941.04	66,474.28
"Mana"	59,401.50	61,901.50	11,906.53	4,223.45	16,129.98	45,771.52
"Manini"	83,877.31	85,306.64	8,399.81	6,450.17	14,849.98	70,456.66
"Enterprise"	299,548.55	299,548.55	270,453.42	29,095.13	299,548.55	.....
"Mahukona"	152,068.15	152,068.15	60,422.06	9,160.21	69,582.27	82,485.88
"Makaweli"	155,763.01	155,763.01	61,892.63	9,382.53	71,275.16	84,487.85
"Makena"	167,131.17	167,131.17	66,356.03	10,072.68	76,428.71	90,702.46
Total Vessels	19,294,017.96	19,313,599.94	7,628,056.10	1,005,129.83	8,633,185.93	10,680,414.01

Matson Building:						
Bldg. Structure	2,155,077.82	2,155,077.82	252,016.67	43,101.56	295,117.63	1,859,960.19
Equipment	1,616.12	1,616.12	853.48	161.61	1,015.09	601.03
Fort Accessories Bldg.:						
Bldg. Structure	254,083.41	254,083.41	10,127.10	5,081.67	15,208.77	238,874.64
Equipment	29,630.52	29,630.52	5,926.10	2,963.05	8,889.15	20,741.37
Machinery	18,717.66	18,717.66	3,726.77	1,871.77	5,598.54	13,119.12
Meat Department	42,437.52	42,829.00	8,310.09	4,243.75	12,553.84	30,275.16
Upholstery Dept.	326.16	503.85	11.26	32.62	43.88	459.97
Sanitary Dept.	334.62	334.62	33.46	33.46	66.92	267.70
Stores Equipment	12,543.77	12,543.77	2,619.92	1,254.38	3,874.30	8,669.47
Laundry	81,737.60	81,737.60	26,073.98	6,130.32	32,204.30	49,533.30
Main Street Bldg.	60,000.00	60,000.00	.....	3,000.00	3,000.00	57,000.00
Cafeteria	16,730.83	16,730.83	12,544.19	1,673.08	14,217.27	2,513.56
Automobiles	18,669.39	16,320.90	.....	4,066.60	4,066.60	12,254.30
Launch "Barnacle"	4,300.00	4,300.00	4,300.00	.....	4,300.00	.....
Launch "Mahalo"	.....	2,289.32	.....	.....	.....	2,289.32
Launch "Catalina"	292.03	271.06	.....	29.20	29.20	241.86
Wharf Machinery & Equip.	10,133.62	11,755.12	2,590.33	2,026.72	4,617.05	7,138.07
Wharf Eqpt. on Leased Grd.	52,392.96	71,310.83	40,398.27	5,239.30	45,637.57	25,673.26
Wharf Furniture & Fixtures	4,492.58	5,580.32	1,283.93	449.26	1,733.19	3,847.13
Furniture & Fixtures Misc.	92,439.88	108,687.94	(11,111.53)*	9,113.70	67,071.29	41,616.65
			46,846.06			
Tug "Danty"	30,000.00	30,000.00	4,467.21	3,000.00	7,467.21	22,532.79
Crockett Equipment	72,870.78	72,870.78	44,374.22	3,643.54	48,017.76	24,853.02
Seattle Equipment	532.80	532.80	.....	106.56	106.56	426.24
Honolulu Wharf Eqpt.	3,551.81	4,592.53	1,250.72	710.36	1,961.08	2,631.45
Honolulu Pipe Line	3,953.57	4,974.82	2,468.69	197.68	2,666.37	2,308.45
Honolulu Automobiles	.....	2,817.80	.....	161.00	161.00	2,656.80
Honolulu Furn. & Fixtures	.....	116.64	.....	.....	.....	116.64
Hilo Wharf Equipment	1,522.09	1,786.80	910.26	304.42	1,214.68	572.12
Ahukini Wharf Equipment	2,200.00	2,200.00	2,200.00	.....	2,200.00	.....
Kahului Wharf Equipment	897.69	897.69	201.22	44.88	246.10	651.59
Kaanapali Wharf Equipment	2,888.04	2,888.04	1,554.44	144.40	1,698.84	1,189.20
Honokaa Wharf Equipment	3,743.50	7,524.34	.....	938.70	938.70	6,585.64
Honuapo Wharf Equipment	950.00**	.....	.....	.....	.....	.....
Los Angeles Fur. & Fixt.	16,952.50	17,318.30	1,769.17	1,695.25	3,464.42	13,853.88

Matson Navigation Company—Continued

Item 20

Depreciation

	Cost Dec. 31, 1929	Cost Dec. 31, 1930	Depreciation Reserve: Balance Jan. 1, 1930	Depreciation Reserve: 1930 depreciation	Depreciation Reserve: Balance Dec. 31, 1930	Net value
Los Angeles Automobiles	.....	1,456.30	.....	336.69	336.69	1,119.61
Chicago Fur. & Fixtures	3,103.75	3,163.75	328.81	309.18	637.99	2,525.76
Chicago Automobiles	.....	605.75	.....	113.58	113.58	492.17
New York Fur. & Fixtures	2,450.04	3,516.22	306.89	245.00	551.89	2,964.33
New York Automobiles	.....	608.97	.....	114.18	114.18	494.79
	22,295,591.02	22,365,792.16	8,105,548.74 (11,111.53)*	1,107,667.30	9,224,327.57	13,141,464.59

[fol. 66] Matson Navigation Company

Item 20—Depreciation (Continued)

* 1906–1919 Eliminations Added Back (in 1930)		$17,345.40
Eliminated Year 1927	6,800.42	
Eliminated Year 1928	4,362.76	
Eliminated Year 1930	6,182.22	
Less Depreciation on 1918–1929 Additions included in Balances at Jan. 1, 1930		6,182.22
		11,163.18
Depreciation on Typewriter Sold		51.65
		11,111.53

** Transferred to Honokaa Equipment.

[fol. 67] Matson Navigation Company

Item 20a

Allocation of Depreciation

	Total	Without state	Deductions for state purposes
Matson Navigation Company:			
Vessels	$1,005,129.83	1,005,129.83	
Matson Bldg., Structure	43,101.56	.....	43,101.56
Matson Bldg., Equipment	161.61	.....	161.61
Port Accessories Bldg. Structure	5,081.67	5,081.67	.....
Service Dept. Equipment	16,529.35	16,529.35	.....
Main Street Building	3,000.00	.....	3,000.00
Tug "Danty"	3,000.00	.....	3,000.00
Miscellaneous Equipment	31,663.28	31,663.28	.....
Total	1,107,667.30	1,058,404.13	49,263.17
The Oceanic Steamship Co.:			
Vessels	176,000.01	176,000.01	
Equipment	2,608.96	2,608.96	
Total	178,608.97	178,608.97	
Matson Terminals, Inc.:			
California Properties:			
San Francisco Wharf Eqpt	26,504.43		
Crockett Equipment	650.71		
Western Refinery	54.86		
Total	27,210.00	23,733.03	3,476.97*
Hawaiian Wharf	6,863.61	6,863.61	
Seattle Equipment	4,014.53	4,014.53	
Total	38,088.14	34,611.17	3,476.97
Total Depreciation	1,324,364.41	1,271,624.27	52,740.14

An amount of $2,834.56, being 1/3 of 1928 repairs disallowed by Revenue Agent and included in Item 20 is not included in computing amount of depreciation used as deduction for state purposes.

*Total Revenue from Stevedoring and Car Labor		$511,479.07
Revenue from Business done Within the State		72,958.63
Percentage used as Basis for Deduction for State Purposes		14.26424
Matson Terminals Inc. Deprec'n. as above on California Properties	27,210.00	
Less 1/3 of 1928 Repairs disallowed	2,834.56	
14.26424% of	24,375.44	3,476.97

Matson Navigation Company

Analysis of Eliminations per Schedule A, Column 4

	Vessels Net Earnings	Miscellaneous Income	Ordinary & Necessary Expenses	Taxes
Matson Navigation Company:				
Other Income:				
Cafeteria Net Revenue Charged Vessels for Crew Board	$34,268.63*	(34,268.63)		
Insurance Commission Refund	8,848.39	(8,848.39)		
Trade Discount Vessels	42,204.22	(42,204.22)		
"Polynesian" Publication-Vessels	13,910.60	(13,910.60)		
Damages "Mauna Ala"	14,479.43	(14,479.43)		
Taxes included in Operating Exp.	.....	.....	(46,735.24)	46,735.24
Ordinary & Necessary Expenses:				
Service Dept. Expense	(5,312.17)	.....	(5,312.17)	
Seamen's Bonus	(53,382.30)	.....	(53,382.30)	
Purchasing Dept. Expenses	(23,310.25)	.....	(23,310.25)	
Stand by & Vacation Wages	(10,510.09)	.....	(10,510.09)	
The Oceanic Steamship Co.:				
Seamen's Bonus	(12,249.65)	.....	(12,249.65)	
Stand by & Vacation Wages	(1,498.79)	.....	(1,498.79)	
Stevedoring–Sydney	18,597.20	(18,597.20)	.....	
	26,045.22	(132,308.47)	(152,998.49)	46,735.24
*Total Cafeteria revenue	168,722.31	Crew board incl. therein		133,631.40
Total Cafeteria expense & costs	125,432.19			
Cafeteria net revenue	43,290.12			
Percent of crew board to total gross revenue				79.20197
79.20197% of $43,290.12 (Cafeteria net gain eliminated)				34,268.63

Note: Items within ( ) should be red ink.

[fol. 69] The Oceanic Steamship Company

Schedules

Schedule D—Balance Sheets.
E—Reconciliation of Net Income and Analysis of Changes in Surplus.
Item 10a—Other Income.
" 16 —Taxes.
" 17 —Losses.
" 20 —Depreciation.

[fol. 70] Matson Navigation Company

Oceanic Steamship Company

Schedule D

Balance Sheets

Assets	Jan. 1, 1930	Dec. 31, 1930
Cash	$814,172.75	61,865.10
Accounts Receivable	202,827.78	48,321.52
Depreciable Assets	533,221.09	3,843,063.65
Deferred Charges	373,414.97	59,869.49
Investments	974,210.00	524.210.00
Spare Gear & Machinery	69,911.03	76,106.03
Total Assets	2,967,757.62	4,613,435.79
Liabilities		
Indebtedness	1,304.35	8,970.91
Federal Taxes Accrued	117,842.60	72,602.15
Deferred Credits	.....	10,755.76
Reserve for Self-Carried Marine Insurance	34,391.56	27,484.43
Reserve for Major Repairs	81,042.33	86,732.26
Reserve for Protection & Indemnity Insurance	17,212.64	26,608.24
Reserve for Cargo Loss & Damage	3,796.00	6,495.62
Capital Stock	1,500,000.00	1,500,000.00
Paid in Surplus	.....	1,100,000.00
Earned Surplus	1,212,168.14	1,773,786.42
Total Liabilities	2,967,757.62	4,613,435.79

Reconcilement of Depreciable Assets

Cost per Books, Item 20	1,232,517.67	1,256,304.84
Construction New Steamers	.....	3,528,622.27
	1,232,517.67	4,784,927.11
Deduct:		
Reserve for Depreciation	577,319.61	819,886.49
Reserve for Obsolescence	121,976.97	121,976.97
Total Deductions	699,296.58	941,863.46
Depreciable Assets, as above	533,221.09	3,843,063.65

[fol. 71] Matson Navigation Company

Oceanic Steamship Company

Schedule E

Reconciliation of Net Income and Analysis of Changes in Surplus

1. Net Income from Item 24		$709,098.44
4. Charges Against Reserves for Contingencies:		
(a) Repairs Reserve		54,310.07
(b) Marine Insurance Reserve		28,797.09
(c) Protection & Indemnity Insurance Reserve		3,229.43
(d) Cargo Loss and Damage Reserve		2,400.38
(e) Stevedoring Arbitrary		26,070.45
		823,905.86
13. Unallowable Deductions:		
Additions to Reserves for Contingencies:		
(j) (1) Repair Reserve, Item 4a	60,000.00	
(2) Marine Insurance Reserve	21,889.96	
(3) Protection & Indemnity Ins.	12,625.03	
(4) Cargo Loss & Damage Reserve	5,100.00	
(5) Stevedoring Arbitrary	26,070.45	
Other Unallowable Deductions:		
(j) (1) Excess Depreciation, Item 20	63,999.99	
Federal Taxes Estimated	72,602.15	
		262,287.58
7. Net Profit for the Year as Shown by the Books		561,618.28
8. Surplus at Close of Preceding Taxable Year		1,212,168.14
12. Surplus at Close of Taxable Year, Schedule D		1,773,786.42

[fol. 72] Matson Navigation Company

Oceanic Steamship Company

Item 10a—Other Income

Commissions	$30,911.30
Stevedoring	18,597.20
Miscellaneous	5,058.48
Exchange	2,513.42
Discount	56.43
Total	57,136.83

Item 16—Taxes

Australian Taxes	8,102.36
Suva Taxes	2,651.52
San Francisco Personal Property Tax	917.23
Stamp Tax	291.75

Item 16—Taxes (continued)

Corporation Franchise Tax		25.00
Honolulu Taxes		10.00
Total		11,997.86
Less Deferred to Year 1931		3,077.91
Net Total		8,919.95

Item 17—Losses

Marine Insurance Losses & Expense		28,797.09
"S.S. Sierra"	4,259.26	
"Sonoma"	2,531.25	
"Ventura"	22,006.58	
Protection & Indemnity Losses & Expense		3,229.43
Cargo Loss & Damage Claims, less Salvage		2,400.38
Total		34,426.90

[fol. 73]

Matson Navigation Company

Oceanic Steamship Company

Item 20

Assets and Depreciation

Assets	Cost per books	Revenue agent's adjustments	Estimated salvage value	Additions not depreciated	Depreciable amount	Net value Dec. 31, 1930
S. S. "Sierra"	$400,000.00	8,000.00	40,000.00	.....	352,000.00	128,383.57
"Sonoma"	400,000.00	8,000.00	40,000.00	.....	352,000.00	129,425.66
"Ventura"	400,000.00	8,000.00	40,000.00	.....	352,000.00	130,575.35
Total Vessels	1,200,000.00	24,000.00	120,000.00	.....	1,056,000.00	388,384.58
Molasses Equipment	40,000.00	.....	.....	40,000.00	.....	40,000.00
Sydney Equipment:						
Wharf	5,136.46	.....	.....	.....	5,136.46	919.13
Furniture & Fixtures	4,438.80	.....	.....	372.48	4,066.32	2,650.67
Automobiles	2,280.00	.....	.....	.....	2,280.00	1,710.00
San Francisco Fur. & Fixtures	2,339.28	.....	.....	.....	2,339.28	1,391.56
New York Fur. & Fixtures	94.03	.....	.....	.....	94.03	43.38
Suva Wharf	838.84	.....	.....	125.12	713.72	696.10
Pago Pago Furniture & Fixtures	100.18	.....	.....	.....	100.18	54.26
Pago Pago Wharf	1,012.25	.....	.....	.....	1,012.25	529.67
Suva Furniture & Fixtures	65.00	.....	.....	.....	65.00	39.00
Total Assets	1,256,304.84	24,000.00	120,000.00	40,497.60	1,071,807.24	436,418.35

Depreciation	Res. Jan. 1, 1930	1930 Depr. per books	1930 Depr. Item 20	Excess Depr. Sch. L. (J) (1)	Trans. to Repair Res.	Res. Dec. 31, 1930
S. S. "Sierra"	191,658.51	80,000.00	58,666.67*	21,333.33	(42.08)	271,616.43
"Sonoma"	190,574.34	80,000.00	58,666.67*	21,333.33	.....	270,574.34
"Ventura"	189,424.65	80,000.00	58,666.67*	21,333.33	.....	269,424.65
Total Vessels	571,657.50	240,000.00	176,000.01	63,999.99	(42.08)	811,615.42
Sydney Equipment:						
Automobiles	.....	570.00	570.00	.....	.....	570.00
Wharf	3,190.04	1,027.29	1,027.29	.....	.....	4,217.33
Furniture & Fixtures	1,381.50	406.63	406.63	.....	.....	1,788.13
San Francisco Fur. & Fixtures	713.79	233.93	233.93	.....	.....	947.72
New York Furniture & Fixtures	41.25	9.40	9.40	.....	.....	50.65
Suva Furniture & Fixtures	19.50	6.50	6.50	.....	.....	26.00
Pago Pago Furniture & Fixtures	35.90	10.02	10.02	.....	.....	45.92
Pago Pago Wharf	280.13	202.45	202.45	.....	.....	482.58
Suva Wharf	.....	142.74	142.74	.....	.....	142.74
Total Depreciation	577,319.61	242,608.96	178,608.97	63,999.99	(42.08)	819,886.49

* 16.667% of Depreciable Amount as allowed by Revenue Agent.

Note: Items within ( ) should be red ink.

[fol. 74] Matson Terminals, Inc.

Schedules

Schedule D—Balance Sheets.
E—Reconciliation of Net Income and Analysis of Changes in Surplus.
Item 16—Taxes.
" 20—Depreciation.

[fol. 75] Matson Navigation Company

Matson Terminals, Inc.

Schedule D—Balance Sheets

Assets	Jan. 1, 1930	Dec. 31, 1930
Cash	$16,294.36	41,749.13
Accounts Receivable	143,528.36	74,765.40
Depreciable Assets	106,705.58	117,109.17
Deferred Accounts	748.77	1,845.51
Total Assets	267,277.07	235,469.21
Liabilities		
Accounts Payable	45,077.61	28,693.37
Federal Taxes Accrued	36,825.38	36,400.00
Own Insurance Reserve	1,444.54	
Capital Stock	150,000.00	150,000.00
Surplus	33,929.54	20,375.84
Total Liabilities	267,277.07	235,469.21

[fol. 76] Matson Navigation Company

Matson Terminals Inc.

Schedule E—Reconciliation of Net Income and Analysis of Changes in Surplus

1. Net Income, Item 24	$298,608.20
2. (f-1) Additional Depreciation	2,834.56
5. Total	301,442.76

Schedule E—Reconciliation of Net Income and Analysis of Changes in Surplus—Continued

Deduct:		
13. (a) Donations	41.00	
(f-2) Own Insurance Reserve Additions	465.72	
(k-1) Federal Income Taxes Estimated	36,400.00	36,906.72
7. Net Profit as shown by the books		264,536.04
8. Surplus close of preceding taxable year		33,929.54
9. (a) Insurance Reserve Transferred		1,910.26
10. Total of lines 7 to 9 inclusive		300,375.84
15. (a) Dividends Paid		280,000.00
12. Surplus at close of taxable year, Schedule D		20,375.84

[fol. 77] Matson Navigation Company

Matson Terminals, Inc.

Item 16—Taxes

Hawaiian Islands Taxes	$1,383.55
San Francisco Personal Property	806.48
Corporation Franchise Tax—Calif	423.22
Corporation Franchise Tax—Wash.	50.30
Seattle Personal Property Tax	313.20
Licenses	18.10
Total	$2,994.85
Less Deferred to Year 1931	403.24
Item 16	$2,591.61

[fol. 78]

Matson Navigation Company

Matson Terminals Inc.

Item 20

Assets	Cost	Depreciation Jan. 1, 1930	1930 Deprec'n.	Reserve Dec. 31, 1930	Net value
San Francisco Wharf Eqpt.:					
20% of cost 1925–29	$121,515.57	45,173.75	24,303.11	68,843.62	52,671.95
Less 1925 Deprec. (Part of Yr.)	.....	.....	633.24		
Net Depreciation	.....	.....	23,669.87		
Honolulu Wharf Equipment:					
20% of Cost 1925–29	28,191.69	17,414.26	5,638.34	22,782.02	5,409.67
Less 1925 Deprec. (Part of Yr.)	.....	.....	270.58		
Net Depreciation	.....	.....	5,367.76		
Hilo Wharf Equipment:					
20% of Cost 1925–29	7,954.86	5,723.07	1,590.97	7,218.92	735.94
Less 1925 Deprec. (Part of Yr.)	.....	.....	95.12		
Net Depreciation	.....	.....	1,495.85		
Crockett Wharf Equipment:					
20% of Cost—1929	3,253.53	1,905.01	650.71	2,555.72	697.81
Western Refinery Wharf Eqpt.:					
20% of Cost—1929	274.30	164.58	54.86	219.44	54.86
Seattle Equipment:					
Trucks & Dock Eqpt. 20% of Cost 1925–29	16,823.97	9,597.89	3,365.79	12,962.68	3,861.29
Deprec'n. previously eliminated now restored	30,608.79	.....	.....	30,608.79	
Office Furniture & Fixtures, 10% of cost 1923–29	1,862.34	411.76	186.23	597.99	1,264.35

Deprec'n. previously eliminated now restored	894.90	.....	.....	894.90	
Automobiles—Cost to Dec. 31, 1930	3,125.00	.....	462.51	462.51	2,662.49
	214,504.95	80,390.32	35,253.58	147,146.59	67,358.36
1930 Additions not Depreciated	44,562.59	.....	.....	.....	44,562.59
Hilo Warehouse not Depreciated	5,188.22	.....	.....	.....	5,188.22
Total per Schedule D	264,255.76	.....	.....	147,146.59	117,109.17
Depreciation as above	.....	.....	35,253.58		
Add Depreciation on 1928 Repairs:					
Total Repairs	8,503.68				
1930 proporition 1/3	.....	.....	2,834.56		
Depreciation, Item 20	.....	.....	38,088.14		

(Here follow photolithographs, side folios 79 and 79a.)

SCHEDULE E—RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS

(Copy of Schedule L of Federal Income Tax Return)

1. Net income from Item 24, page 4, of the return	$				13. Unallowable deductions:			
2. Non-taxable income:					(a) Donations, gratuities, and contributions	$		
(a) Interest on Federal, State, Municipal and other bonds					(b) Income and profits taxes paid to the United States or its possessions or foreign countries			
(b) Dividends deductible					(c) Federal taxes paid on tax-free covenant bonds			
(c) Proceeds of life insurance policies paid upon the death of the insured					(d) Special improvement taxes			
(d) Other items of non-taxable income					(e) Furniture and fixtures, additions, or betterments treated as expenses on the books			
3. Charges against reserve for bad debts					(f) Replacements and renewals			
4. Charges against reserves for contingencies, etc.					(g) Insurance premiums paid on the life of any officer or employee			
5. Total lines 1 to 4, inclusive	$				(h) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest upon which is wholly exempt from taxation			
6. Total from line 14					(i) Additions to reserve for bad debts			
7. Net profit for year, as shown by books, before any adjustments are made therein	$	SCHEDULE ATTACHED			(j) Additions to reserves for contingencies			
8. Surplus and undivided profits as shown by balance sheet close of preceding taxable year					(k) Other unallowable deductions			
9. Other credits to surplus					14. Total of line 13	$		
10. Total of lines 7 to 9, inclusive	$				15. Dividends paid during the taxable year:			
11. Total from line 17					(a) Amount paid in cash			
12. Surplus and undivided profits as shown by balance sheet at close of taxable year	$				(b) Amount paid in stock			
					16. Other debits to surplus			
					17. Total of lines 15 and 16	$		

AFFILIATIONS WITH OTHER CORPORATIONS

1. Was your income for the taxable year ended in 1930 included in any Federal consolidated return? No
2. Does the corporation own 95 per cent or more of the outstanding capital stock of another domestic corporation or of other corporations? ____ If answer is "yes" give names (Name)
3. Is 95 per cent or more of your outstanding capital stock owned by another corporation? ____
4. Is 95 per cent or more of your outstanding capital stock as well as 95 per cent or more of the outstanding capital stock of another corporation or of other corporations owned by the same interests? ____

PREDECESSOR BUSINESS

5. Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or businesses in existence during this year? ____ If answer is "yes," give name and address of each predecessor business:
6. Upon such change were any asset values increased or decreased?
7. If the answer is "yes," closing balance sheets of old business and opening balance sheets of new business must be furnished.

BASIS OF RETURN

8. Is this return made on the basis of actual receipts and disbursements? ____ If not, describe fully what other basis or method was used in computing net income:

Proper Accounting Methods

VALUATION OF INVENTORIES

9. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and the date inventory was last reconciled with stock:

CAPITAL STOCK

10. No. shares outstanding: Common 244,521; Preferred ____ Par value: Common $ 24,432,100.00; Preferred $ ____

AFFIDAVIT OF PRESIDENT, VICE PRESIDENT, SECRETARY OR TREASURER

STATE OF CALIFORNIA
City and County of San Francisco } ss.

I, R. P. Hasenauer, being duly sworn, depose and say that I am Treasurer (Insert official title) of Matson Navigation Company (Name of bank or corporation); that I am an executive officer thereof; and that the facts set forth in the foregoing return are, in all respects, full, true and correct.

R. P. Hasenauer

Subscribed and sworn to before me this 13th day of March, 31

Katherine Hallohan, Notary Public, in and for the City and County of San Francisco, State of California

42A

SCHEDULE C—ALLOCATION OF INCOME

(To be filed out by corporations doing business both within and without the state)

For the purpose of determining the proportion of net income arising from business done within and without the state, the following information must be given (See Instructions):

	Total within and without the state (a)	Total within the state (b)	Per centum within the state (b) ÷ (a)
(1) Average monthly value (actual) of real and tangible personal property	$	$	
(2) Wages, salaries, commissions and other compensation of employees	$	$	
(3) Gross sales (attach schedule showing basis)	$	$	
Total per centum (sum of the percentages above)			(c)
Average per centum (1/3 of (c) carried to Schedule B, Item 45)			(d)

SCHEDULE D—COMPARATIVE BALANCE SHEETS

(Copy of Schedule K of Federal Income Tax Return)

ITEMS	BEGINNING OF TAXABLE YEAR	END OF TAXABLE YEAR
ASSETS		
1. Cash	$	$
2. Notes receivable		
3. Accounts receivable		
Total receivable		
Less reserve for bad debts		
4. Inventories		
5. Investments:		
Federal, State and Municipal bonds		
Other investments		
6. Loans		
7. Deferred charges:		
Prepaid taxes		
Other deferred charges		
8. Capital assets:		
Land SCHEDULE ATTACHED		
Buildings		
Machinery, furniture, fixtures and equipment		
Less reserve for depreciation and depletion		
9. Patents		
10. Good will		
11. Other assets		
12. TOTAL ASSETS	$	$
LIABILITIES		
13. Notes payable	$	$
14. Accounts payable		
15. Accrued expenses		
16. Other liabilities		
TOTAL		
17. Capital stock:		
Preferred stock (less stock in treasury)		
Common stock (less stock in treasury)		
18. Surplus		
19. Undivided profits		
Net worth	$	$
20. TOTAL LIABILITIES		

ENCLOSE SCHEDULES BUT PLEASE DO NOT FASTEN ANY PAPERS TO THIS RETURN

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79-A

423

[fol. 80] EXHIBIT "B" TO APPEAL

State of California, Office of Franchise Tax Commissioner, Sacramento

No. 15951

Notice of Additional Franchise Tax proposed to be assessed

Matson Navigation Co.,
215 Market Street,
San Francisco, Calif.

Date: March 5, 1932.

32463

Bank and Corporation Franchise Tax return for taxable year ended December 31, 1930, as transmitted by the above corporation has been examined and the correct amount of the tax determined by the Commissioner, and it is proposed to assess an additional tax in the amount of $101,045.92. The details of the proposed additional assessment and of computing said tax are set forth below.

Amount of tax must be transmitted to the Franchise Tax Commissioner by certified check or money order payable to the State Treasurer. Interest must be added at six per cent per annum from the due date, March 15, 1931, to the date of payment.

Item 43	Net income both within and without the State from Schedule A	$3,256,506.03
25	Interest on federal, state and municipal bonds: Section 6 provides that gross income shall include gains, profits, and income derived from the business of whatever kind and nature	186,150.16
	Revised net income allocated 100% to Calif	$3,442,656.19
44	4%	137,706.24
45	Offset	17,051.05
46		120,655.19
47	Add: 4% of offset	682.04

Total tax assessed		121,337.23
Less tax liability assessed:		
Acknowledgment No. 17355	$12,845.30	
Proposed assessment No. 13255	7,446.01	20,291.31
Additional tax		$101,045.92

This notice of additional franchise tax proposed to be assessed is forwarded to the taxpayer whose name appears hereon in accordance with the provisions of the Bank and Corporation Franchise Tax Act, Section 25 (see reverse side of this notice).

Interest as called for above must be included in remittance.

Chas. J. McColgan, Franchise Tax Commissioner,
by Richard P. Lowe.

GEZ.

[fol. 81] EXHIBIT "C" TO APPEAL

State of California, Office of Franchise Tax Commissioner

Sacramento

Matson Navigation Co.,
215 Market Street,
San Francisco, California.

32463

Notice of Action of Franchise Tax Commissioner Upon Taxpayer's Protest

Dated at Sacramento, California,
November 23, 1932.

You are hereby notified that pursuant to the terms of Section 25 of the Bank and Corporation Franchise Tax Act and the protest which you filed complaining of the computation and levy of your tax by the Franchise Tax Commissioner under said act as disclosed by return filed for the taxable year beginning January 1, 1930, and ended December 31, 1930, as set forth in Notice of Additional

Franchise Tax Proposed to be Assessed, No. 05951; dated March 5, 1932, in the amount of $101,045.92.

The computation and levy complained of have been reconsidered by the Franchise Tax Commissioner and he has acted upon said protest as follows:

In view of the evidence adduced at conference and hearings, liability is determined in accordance with the following computation:

Total tax assessed		$39,929.02
Less: Acknowledgment No. 17355	$12,845.30	
Proposed assessment No. 13255	7,445.01	20,291.31
Revised additional tax		$19,637.71

Interest has accrued on the deficiency at the rate of 6% per annum from March 15, 1931.

Yours very truly, Chas. J. McColgan, Franchise Tax Commissioner. Chas. A. Temple, Auditor.

CAT:EB.

[fol. 82] BEFORE STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of MATSON NAVIGATION COMPANY, THE OCEANIC STEAMSHIP COMPANY, and MATSON TERMINALS, INC.

MINUTES OF THE BOARD

Wednesday, May 1, 1933.

On this day there came on regularly for hearing the matter of the appeal of Matson Navigation Co., The Oceanic Steamship Company, and Matson Terminals, Inc., from the action of the Franchise Tax Commissioner in overruling their protest to a proposed assessment of an additional tax of $19,637.71, based upon their return for the year ended December 31, 1930.

The appellants were represented by Mr. Gregory A. Harrison, attorney, and Mr. F. A. Bailey, Vice President and Secretary of Matson Navigation Company. Mr. Chas. J. McColgan, Franchise Tax Commissioner, appeared in

his own behalf. After receiving evidence, both oral and [fol. 83] documentary, now upon motion of Mr. Stewart, seconded by Mr. Cattell and duly carried, it is ordered that the matter be taken under consideration for final determination of the Board.

Upon motion of Mr. Stewart, seconded by Mr. Cattell and duly carried, it is ordered that the appellants be allowed ten days in which to file additional memoranda in support of their appeal.

Frank M. Keesling, Assistant Secretary.

[fol. 84] BEFORE STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of MATSON NAVIGATION CO., THE OCEANIC STEAMSHIP COMPANY, and MATSON TERMINALS, INC.

Appearances:

For appellants: Mr. Gregory A. Harrison, Attorney of Brobeck, Phleger & Harrison, and Mr. F. A. Bailey, Vice President and General Manager of Matson Navigation Co.

For respondent, Honorable Chas. J. McColgan, Franchise Tax Commissioner.

OPINION

These are appeals pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chap. 13, Stats. 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protests of Matson Navigation Co., The Oceanic Steamship Company and Matson Terminals, Inc. to a proposed assessment of an additional tax of $19,637.71 for the year 1931 based upon their returns for the calendar year ended December 31, 1930.

It appears that the appellants are corporations incorporated under the laws of this state, and, in addition to [fol. 85] being engaged in business of a purely local character, are engaged largely in the business of transporting persons and property by vessels operating between ports on the Pacific Coast, including ports in California, and ports in Hawaii, the South Seas, Australia and New Zealand.

In their return for the year ended December 31, 1930, the appellants did not report as subject to the Franchise Tax, imposed by the Act, any portion of their income from their business done in interstate or foreign commerce. The Commissioner, however, allocated to business done in this state that portion of appellants' income from their business done in interstate and foreign commerce which the amount of business originating in this state bore to the total business done, and upon the basis of such allocation proposed the additional assessment in question.

Appellants contend that the Act cannot and should not be construed as imposing a tax measured by income derived from business done in interstate or foreign commerce, even though such a tax were within the power of the state to impose. In support of this contention, appellants argue that nowhere does the Act specifically provide that income from business done in interstate or foreign commerce shall be included in the measure of the tax but on the contrary, the Act provides that the tax shall be [fol. 86] be measured only by income from local or intrastate business.

We are unable to find any provision in the Act from which it can be inferred that the measure of the tax is confined solely to income from purely local or intrastate business. Although it is true that the Act does not specifically provide that income from business done in interstate or foreign commerce shall be included in the measure of the tax, we do not believe that such a specific provision is necessary to include such income, if the language used in sufficiently broad to include it and if it is not specifically excluded.

Section 4 of the Act as it read in 1931 provided that "every financial mercantile, manufacturing and business corporation doing business within the limits of this State of the classes referred to in subdivision 2(a) of section 16 of Article XIII of the Constitution of this State, shall annually pay to the State for the privilege of exercising its corporate franchises within this State, a tax according to or measured by its net income."

Under this section, considered alone, it would seem that if a corporation of the classes mentioned does any business in this state, the tax should be measured by its entire net income, regardless of the source from which that income

is derived, whether from purely local business or from [fol. 87] business done in interstate or foreign commerce.

However, section 10 of the Act, after stating that if the entire business of the corporation is done within this State, the tax shall be measured by its entire net income, provides that in case the entire business of the corporation is not done within this State, the tax shall, in order to avoid double taxation, be measured by that portion of the net income reasonably attributable to business done within this state.

Although, Section 10, in the interests of avoiding double taxation, limits the provisions of section 4 of the Act to the extent of excluding from the measure of the tax, income derived from business done outside the state, there is nothing in this section from which it could be inferred that that portion of the income from business done in interstate or foreign commerce which is reasonably attributable to business done in this state should be excluded from the measure of the tax.

The appellants argue that insofar as they are engaged in business in interstate or foreign commerce, they are not doing business within this state. This argument is manifestly unsound. It is apparent that even business done in interstate or foreign commerce must be done somewhere and it must be done either entirely within the state, en- [fol. 88] tirely without the state or partly within and partly without the state. There are no other alternatives. Thus appellants' argument would be valid only if their business done in interstate or foreign commerce were transacted wholly without the state. The very fact that appellants are engaged in interstate commerce between this state and other states, and in foreign commerce between this state and foreign countries, would seem to exclude the possibility that all of such business is done entirely without the state. Furthermore, as a matter of fact, appellants, as an incident to the conduct of their transportation business, engage in numerous activities here, such as the maintenance of offices for the sale of tickets and for the receipt of orders, and the loading and unloading of passengers and freight, etc. These activities, we think, clearly constitute doing business in this state.

In further support of their contention that the act cannot or should not be construed as including income derived

from business done in interstate or foreign commerce in the measure of the tax, appellants present an argument based upon the fact that the Act makes no distinction between domestic and foreign corporations but imposes the tax, and specifies the income which shall be used as a measure of the tax, in terms applicable alike to both domestic [fol. 89] and foreign corporations. From this fact, appellants draw the inference that if the Act be construed to impose a tax upon domestic corporations, such as appellants, which are doing business in this state, measured by income derived from business done in interstate or foreign commerce, the Act must also be construed to impose a tax upon foreign corporations doing business here measured by income derived from business done in interstate or foreign commerce. But, appellants argue, it is beyond the power of the state to impose a tax upon foreign corporations measured by income derived from business done in interstate or foreign commerce. Furthermore, appellants maintain that the provisions of the act imposing the tax and providing for the measure of the tax cannot be severed and held valid with respect to domestic corporations if they are invalid with respect to foreign corporations. Accordingly, appellants conclude that if the Act is construed as imposing the tax upon domestic corporations measured by income derived from interstate or foreign commerce, the entire Act is rendered unconstitutional.

This argument, we believe is based upon a misunderstanding of the Act and upon a misconception of the power of the state to impose a Franchise Tax upon foreign corporations doing business in this State.

[fol. 90] It is true that it has been held that the state may not impose a franchise tax, whether measured by net income or otherwise, upon foreign corporations doing business within the state, if the foreign corporation's business is exclusively interstate in character and if it does no local business whatsoever, (Alpha Portland Cement Co. v. Massachusetts, 268 U. S. 203, 45 Supp. Ct. 477; Anglo-Chilean Nitrate Sales Co. vs. Alabama, 53 Supp. Ct. 373; People vs. Pacific Alaska Steamship Co. 182 Cal. 202). Presumably, a similar rule is applicable to foreign corporations whose business is exclusively of a foreign commerce character.

However, although the Act, as appellants argue, does not distinguish in so many words between domestic and foreign corporations, and even though the Act be construed as imposing a tax upon domestic corporations measured by income for business done in interstate or foreign commerce, it does not follow that the Act must be accorded a similar construction with respect to foreign corporations engaged exclusively in interstate or foreign commerce. Under the provisions of section 4 of the Act, quoted above, the tax is imposed upon financial, mercantile, manufacturing and business corporations doing business in this state of the classes referred to in subdivision 2 (a) of section 16 of Article XIII of the Constitution. Subdivision 2 (a) of [fol. 91] section 16 of Article XIII as it read prior to the amendments adopted by the people on June 27, 1933 (as amended, section 16 does not contain a subdivision numbered 2 (a)) refers only to those financial, mercantile, manufacturing and business corporations doing business within the limits of this state which are subject to be taxed pursuant to subdivision (d) of section 14 of Article XIII. Section 14(d), it is to be noted, provides that with certain exceptions, such as the franchises of public utility corporations, all franchises shall be taxed at their full cash value. It was pursuant to this section that franchises of general corporations were taxed prior to the adoption of section 16 of Article XIII and the enactment of the Bank and Corporation Franchise Tax Act.

Foreign corporations engaged exclusively in interstate or foreign commerce, not being subject to a franchise tax were thus not subject to be taxed pursuant to section 14 (d) (see People vs. Alaska Pacific Steamship Co., supra, expressly so holding) and thus by the very terms of the Act, itself, are not subject to the tax imposed by the Act. Consequently, appellants' argument to the effect that if the Act is to be construed as including in the measure of the tax income of domestic corporations derived from business done in interstate or foreign commerce, it must also [fol. 92] be construed in a similar fashion with respect to foreign corporations is unsound insofar as foreign corporations engaged exclusively in interstate or foreign commerce are concerned.

A different situation is presented with respect to foreign corporations doing some local or intrastate business here.

Undoubtedly, such corporations were subject to be taxed pursuant to section 14 (d) of Article XIII and, consequently, are subject to the tax imposed by the Act. Thus, if the Act is construed as including in the measure of the tax on domestic corporations a portion of their income derived from business done in interstate or foreign commerce, it must also be construed, inasmuch as no distinction is made between domestic and foreign corporations, subject to the Act, as providing that a portion of the income derived from interstate or foreign corporations doing local or intrastate business here.

But contrary to appellants' statements, we believe it is entirely within the power of the state to impose a franchise tax upon foreign corporations doing local or intrastate business here and to measure that tax by income properly attributable to business done within the state, regardless of whether the business is intrastate business or whether it is of an interstate or foreign commerce character.

[fol. 93] It has been held that a franchise tax measured by net income is not to be regarded as a tax upon income, and, consequently, there may be included in the measure of the tax, income, such as income from tax exempt bonds, which cannot be taxed directly (Flint vs. Stone Tracy Co. 220 U. S. 107, 31 Sup. Ct. 343; Pacific Co. vs. Johnson, 212 Cal. 148, 285 U. S. 480). Thus it would seem arguable that if a corporation exercises a franchise granted by the state, the state may tax the franchise and include in the measure of the tax, income derived from interstate or foreign commerce business, even though such income could not be taxed directly. However, it has been held that a tax imposed upon net income including income derived from transactions in interstate or foreign commerce does not amount to burdening interstate or foreign commerce, and is valid (U. S. Glue Co. vs. Oak Creek, 247 U. S. 321, 38 Sup. Ct. 499; Peck & Co. vs. Lowe, 247 U. S. 165, 38 Sup. Ct. 432). Clearly, it would seem that a franchise tax measured by net income does not burden interstate or foreign commerce if a tax levied directly upon net income does not have that effect.

But appellants argue that the principles applicable to a state's power to impose franchise taxes measured by net income are entirely different from the principles applicable

to a state's power to impose taxes upon net income. Although there are differences, the principal difference, we believe, is that a franchise tax, as pointed out above, may [fol. 94] be measured by income which cannot be taxed directly.

It is true that in Alpha Portland Cement Co. vs. Massachusetts, supra, it was held that a franchise tax, measured by net income, could not be imposed upon a foreign corporation engaged exclusively in interstate commerce, whereas in view of the decisions in U. S. Glue Co. vs. Oak Creek; and Peck & Co. vs. Lowe, supra, to the effect that a tax on income is not a burden upon interstate or foreign commerce, and in view of the decision in Shaffer vs. Carter, 252 U. S. 37, 40 Sup. Ct. 221, to the effect that the net income of a non-resident from business done in the state may be taxed, it would seem arguable that a state could impose a tax directly upon the net income of a foreign corporation from business done in the state, even though the business was exclusively interstate in character. This possible difference in a state's power to impose franchise taxes measured by net income and direct net income taxes is explainable, we think, on the grounds that a foreign corporation engaged exclusively in interstate commerce, although doing business within the state and therefore subject to a direct net income tax, cannot be regarded as exercising a franchise or privilege granted by the state upon which a franchise tax can be imposed.

This difference does not hold true, we believe, with re- [fol. 95] spect to foreign corporations doing some local or intrastate business in the state. If the foreign corporation does some local or intrastate business and thereby exercises a franchise or privilege granted by the state, the state may require the corporation to pay for that privilege a tax measured by its net income attributable to business done in the state, regardless of whether the income is derived from intrastate business or from business done in interstate or foreign commerce. The cases of Underwood Typewriter Co. vs. Chamberlain, 254 U. S. 113, 41 Sup. Ct. 45; and Bass, Ratcliff & Gretton, Ltd. vs. State Tax Commission, 266 U. S. 271, 45 Sup. Ct. 82, squarely support this conclusion.

The following language of the court in the Underwood case completely refutes appellants' argument:

"A tax is not obnoxious to the commerce clause merely because imposed upon property used in interstate commerce, even if it takes the form of a tax for the privilege of exercising its franchise within the State. Postal Telegraph Cable Co. vs. Adams, 155 U. S. 688, 695. This tax is based upon the net profits earned within the State. That a tax measured by net profits is valid, although these profits may have been derived in part, or indeed mainly, from interstate commerce is settled. U. S. Glue Co. v. Oak Creek, 247 U. S. 321; Shaffer vs. Carter, 252 U. S. 37, 57; compare Peck & Co. vs. Lowe, 247 U. S. 165. Whether it be deemed a property tax or a franchise tax, it is not obnoxious to the commerce clause."

Since it is within the power of the state to impose a franchise tax measured by income from business done within [fol. 96] the state, whether done in interstate or foreign commerce, upon all the foreign corporations which are subject to the Act, it follows that the act may be construed as including in the measure of the tax upon domestic corporations that portion of their income derived from business done in interstate or foreign commerce which is attributable to business done in California without thereby rendering the act unconstitutional for the reasons asserted by appellants.

What we have said in answer to appellant's second argument, in support of its contention that the Act cannot and should not be construed as providing that income from business done in interstate or foreign commerce should be included in the measure of the tax, largely disposes of appellant's third argument in support of this contention. This argument is to the effect that if the Act be construed in a manner contrary to that contended for by appellants, foreign corporations would be permitted to transact business in California on more favorable conditions than domestic corporations and the Act would thereby violate section 15 of Article XII of the Constitution which provides;

"No corporation organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State."

It appears that appellants in addition to being engaged [fol. 97] in interstate or foreign commerce are also engaged in some purely local or intrastate business. As we have seen, foreign corporations doing some local business here may be required to pay a franchise tax measured by income attributable to business done in this state even though of an interstate or foreign commerce character. According to appellants' own argument, the Act must be construed as being applicable alike to both foreign and domestic corporations. It follows that the Act cannot be regarded as permitting foreign corporations "similar" to appellants, i. e., corporations doing some local or intrastate business here, to transact business here on more favorable conditions than appellants.

It may be argued, however, that the same construction of the Act which would justify the proposed assessment in question would result in construing the Act as being applicable to domestic corporations engaged exclusively in interstate or foreign commerce. If so, it might be argued that the Act permits foreign corporations engaged exclusively in interstate or foreign commerce to transact business here on more favorable conditions than similar domestic corporations since such foreign corporations cannot be subjected to a franchise tax.

However, we are of the opinion that section 15 of Article XII, when properly construed, does not prohibit the State from taxing domestic corporations simply because it cannot [fol. 98] under the Constitution or laws of the United States also tax similar foreign corporations. This point, we think, was settled in Smith vs. Lewis, 211 Cal. 294, holding that the fact that the State is powerless to impose a license tax on a foreign corporation engaged in interstate commerce does not render a license tax on a domestic corporation a violation of section 15 of Article XII, (see also Roger J. Traynor, the Bank and Corporation Franchise Tax Act, ch. 20 of Ballantine's California Corporation Laws, P. 713, N. 76).

Appellants also assert in support of their contention regarding the application of the tax to income derived from business done in interstate or foreign commerce that, at the time the Act was in the course of passage through the Legislature, they were definitely assured by various state officials that income from transportation of persons and

property upon the high seas in interstate and foreign commerce would not be included in the measure of the tax. With all due respect to the officials to whom appellants have reference, we are of the opinion that the Act, as passed by the Legislature and approved by the Governor, does not exclude from the measure of the tax income attributable to business done in this State, simply because it may have been derived from the transportation of persons and property upon the high seas in interstate and foreign commerce. Un-
[fol. 99] questionably, of course, it is the Commissioner's duty to administer the Act, as finally passed by the Legislature, rather than in accordance with any "understanding" of the kind referred to by appellants.

In further support of their contention, appellants urge upon us that the predecessor of the Commissioner that proposed the additional assessment in question, consistently abided by the "understanding" above referred to, and did not require appellants to pay a tax measured by any portion of their income from their transportation business. However, appellants do not offer any reasons, other than those above considered and disposed of, for holding that the preceding Commissioner acted correctly in so doing. Obviously, the fact that a particular Commissioner fails properly to administer the Act by reason of an erroneous interpretation of the Act, or for other reasons, does not preclude either a subsequent Commissioner or this Board from adopting and enforcing a correct interpretation.

As a second contention, appellants maintain that even though the Act be construed to justify the assessment in question, the assessment is invalid for the reason that it is beyond the power of the State to impose a franchise tax upon appellants, measured by any portion of their income from their transportation business done in interstate or foreign commerce.

[fol. 100] But if it is within the power of the State to impose a franchise tax upon foreign corporations doing some local business here, measured by income from business done in this State, including income from business done in interstate or foreign commerce, it is clearly within the power of the State to impose a franchise tax, similarly measured, upon domestic corporations doing some local business here.

For that matter, it would seem that even though appellants were engaged exclusively in business of an interstate

or foreign commerce character, they must be regarded, inasmuch as they were incorporated under the laws of this State, as possessing franchises granted by this State, and for the privilege of exercising those franchises could be required to pay a tax measured at least by income from business done in this state and possibly by their entire net income. See Cream of Wheat Co. vs. County of Grand Forks, 253 U. S. 325, 40 Sup. Ct. 558, in which a franchise tax upon a domestic corporation measured by the entire value of the franchise was sustained, even though the business of the corporation was conducted entirely without the state and even though it had no tangible real or personal property within the State of incorporation. See also the following cases, holding that the State may impose a franchise tax on a domestic corporation, measured by total capital stock instead of merely by capital employed within the State: Kansas City, Fort Scott & Memphis Ry. vs. [fol. 101] Botkin, 240 U. S. 227, 36 Sup. Ct. 261; Kansas City, Memphis & Birmingham Ry. Co. vs. Stiles, 242 U. S. 111, 37 Sup. Ct. 58; and Roberts and Schaefer Co. vs. Emmerson, 271 U. S. 50, 46 Sup. Ct. 375.

Furthermore, it is to be noted that the tax imposed upon public utilities pursuant to section 14 of Article XIII of the Constitution, measured by gross receipts, including a portion of gross receipts from business done in interstate commerce, has been sustained on the theory that the tax was in lieu of a property tax which the State could constitutionally impose (Pullman Co. vs. Richardson, 185 Cal. 484, affirmed 261 U. S. 330). The tax imposed by the Act is in lieu of the tax imposed pursuant to section 14(d) of Article XIII (See section 16 of Article XIII as it read prior to the amendments adopted by the people on June 27, 1933). Inasmuch as the tax imposed pursuant to section 14 (d) has been held to be a property tax upon the so called "corporate excess" of the corporations subject to the tax (Miller & Lux vs. Richardson, 182 Cal. 115, and Schwab vs. Richardson), it would seem that the tax imposed should be held valid, even though measured by net income from business done in interstate or foreign commerce for the reason that it is in lieu of a property tax which the state could constitutionally impose upon appellants (See Schwab vs. Richardson, supra, holding that ap-

pellant, The Oceanic Steamship Company was subject to the [fol. 102] tax imposed pursuant to Section 14 (d)).

As a third contention, appellants maintain that even though the Act can be construed as requiring that a portion of their income from their transportation business should be included in the measure of the tax and even though the Act when so construed is constitutional, the Commissioner has included in the measure of the tax a far greater portion of their income from their transportation business than the Act contemplated should be included.

As noted above, the Act provides in Section 10 that in case the entire business of a corporation is not done within the State, the tax shall be measured by that portion thereof which is derived from business done within the State. This section further provides that the portion of net income derived from business done within the State

"shall be determined by an allocation upon the basis of sales, purchases, expenses of manufacturer, payroll, value and situs of tangible property, or by reference to these or other factors, or by such other method of allocation as is fairly calculated to assign to the State the portion of net income reasonably attributable to the business done within this State and to avoid subjecting the taxpayer to double taxation."

It appears that the Commissioner allocated to income from business done in the State that portion of appellants' income from its transportation business done within and without the state which the amount of the business origi- [fol. 103] nating in this state bore to the total business done. By this means, the Commissioner determined that approximately 22.2% of appellants' net income from their transportation business was attributable to business done in California. Appellants argue that the method of allocation employed by the Commissioner does not fairly apportion to the State that portion of their net income from their transportation business which is reasonably attributable to business done in the State. Appellants suggest that if any of their net income from their transportation business is to be allocated to business done in this state, only that portion of such income should be so allocated which the number of miles traversed by their vessels bears to the total number of miles bears to the total number of miles

traversed by their vessels. If this formula were employed, the net income attributable to business done in California would not exceed one-half of one per cent of the total net income from appellants' transportation business.

The objection to appellants' formula is that it emphasizes the actual transportation of passengers and property to the total disregard of other activities of appellants which, though incidental to the actual transportation of passengers and property, are, nevertheless, and, necessarily, must be, performed by appellants. Obviously, in order to transport passengers and property appellants must obtain passengers and property to transport. Furthermore, appellants must maintain facilities for the loading and unloading of property and for the embarking and disembarking of passengers transported. These factors [fol. 104] are completely disregarded by appellants' formula. Under that formula, the same percentage of income is attributed to California as would be attributed to California if appellants' vessels simply entered California ports and if none of their business originated or terminated here, and if no offices or other facilities were maintained here.

In view of the above, it seems clear that the Commissioner's formula more nearly allocates to the State that portion of the net income of appellants' transportation business which is reasonably attributable to business done within this State than does appellants formula. Furthermore, it is to be observed that if the other States, and the territories and foreign countries, in which appellants do business had franchise tax acts similar to our Act and should employ the formula employed by the Commissioner for the purpose of determining the amount of net income attributable to business done in such states, territories and foreign countries, respectively, the result would be that the full amount of appellants' net income from their transportation business would be allocated between this State and such other States and territories and foreign countries without in any way subjecting appellants to double taxation.

For the above reasons, we are of the opinion that the method employed by the Commissioner is a method of allocation fairly calculated to assign to the State that portion of appellants' net income from their transportation [fol. 105] business which is reasonably attributable to busi-

ness done within this State and which avoids subjecting the appellants to double taxation.

In view of this conclusion and in view of our conclusions regarding the construction of the Act and the power of the State to impose franchise taxes upon domestic corporations, measured by income from business done in interstate or foreign commerce, it follows that the action of the Commissioner in overruling appellants' protest to his proposed assessment of the additional tax in question must be sustained.

[fol. 106] BEFORE STATE BOARD OF EQUALIZATION OF CALIFORNIA

ORDER SUSTAINING ACTION OF COMMISSION

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

It is hereby ordered, adjudged and decreed, that the action of Charles J. McColgan, Franchise Tax Commissioner, in overruling the protest of Matson Navigation Company, The Oceanic Steamship Company and Matson Terminals, Inc., against proposed assessments of additional taxes under Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of February, 1934, by the State Board of Equalization.

R. E. Collins, Chairman; Fred E. Stewart, Member; Jno. C. Corbett, Member; H. G. Cattell, Member.

Attest: Dixwell L. Pierce, Secretary.

[fol. 107] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

STIPULATION AS TO FACTS—Filed Oct. 8, 1934

It is hereby stipulated by and between the parties to the above entitled action that the following facts be and they are hereby stipulated and agreed to for consideration by

the above named court upon hearing of the writ of review herein:

The additional tax referred to in Exhibit B to the petition herein, amounting to the sum of $19,637.71, was imposed as an additional assessment for the year 1931, and was based upon revenue assigned by the Franchise Tax Commissioner to business done within this state during the year ending December 31, 1930.

Matson Navigation Company is, and was at all times herein mentioned, engaged in the transportation of goods and passengers between ports in the Territory of Hawaii [fol. 107a] and ports on the Pacific Coast of the United States. All of the transportation business of the Matson Navigation Company is, and was at all said times, interstate and foreign. All of the revenue of Matson Navigation Company involved in the dispute, and upon which the said additional assessment was based, arose out of the transportation of passengers and merchandise in interstate and foreign commerce.

The Oceanic Steamship Company is and was at all times herein mentioned engaged in the transportation of passengers and goods between ports in the South Sea Islands, Australia and New Zealand and ports in the Territory of Hawaii and the Pacific Coast of the United States. All of its transportation business is, and was at all said times, interstate and foreign. All of the revenue of the Oceanic Steamship Company involved in the dispute, and upon which the said additional assessment was based, arose out of the transportation of passengers and merchandise in interstate and foreign commerce.

None of the transportation business of either of said companies is, or was at any of said times, intrastate in its nature. No goods, wares, merchandise or passengers are, or ever were, transported by either of said companies between points within the State of California.

It is only this revenue from interstate and foreign transportation business of Matson Navigation Company and The Oceanic Steamship Company upon which the additional assessment, the validity of which was assailed before the Board of Equalization and is now involved in this proceeding, is based. None of said additional assessment is based [fol. 107b] upon any income or revenue of the petitioner

Matson Terminals, Inc., but Matson Terminals, Inc., is concerned only in so far as it is a party to a consolidated return and therefore liable for such additional tax, if any, as may be determined to have been properly assessed.

Although the transportation business of Matson Navigation Company and The Oceanic Steamship Company was conducted exclusively in interstate and foreign commerce, and although the additional assessment in controversy was computed based entirely upon a part of the revenue derived from such transportation in interstate and foreign commerce, nevertheless the petitioners did engage, during the years 1930 and 1931, in other substantial activities of a purely intrastate character, the tax computed upon the revenue from such purely intrastate business having been already paid and not being involved in the present controversy.

It is the view of the Commissioner that, in computing the tax he did not levy a tax on income from interstate and foreign commerce as such, but included a portion, to wit, 22.2% of such income in petitioners' net income allocated to California. The petitioners contend that the Commissioner had no right to allocate to California any portion of such income. Respondents contend that, petitioners being domestic corporations, it was proper for the Commissioner to allocate to California a portion of the income from interstate and foreign commerce, based upon the percentage of such business originating in California.

Dated: October 3rd, 1934.

Brobeck, Phleger & Harrison, Attorneys for Petitioners. U. S. Webb, Attorney General, by H. H. Linney, Deputy Attorney General, Attorneys for Respondents.

[fol. 108] [File endorsement omitted]

[fol. 109] IN SUPREME COURT OF CALIFORNIA

In Bank

S. F. No. 15,137

MATSON NAVIGATION COMPANY, a Corporation; THE OCEANIC STEAMSHIP COMPANY, a Corporation, and Matson Terminals, Inc., a Corporation, Petitioners,

vs.

STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA, John C. Corbett, Fred E. Stewart, R. E. Collins, H. G. Cattell and Ray L. Riley, the members of said State Board of Equalization, and Charles J. McColgan, Franchise Tax Commissioner of the State of California, Respondents.

OPINION—Filed March 27, 1935

BY THE COURT:

Petitioners bring this proceeding under section 30 of the Bank & Corporation Franchise Tax Act (Stats. of 1929, p. 19), as such section was amended in 1933. (Stats. of 1933, p. 692.) This is apparently the first case to reach this court under the procedure therein provided. That section, as amended, provides that any corporate tax payer dissatisfied with the assessment levied against it by the Franchise Tax Commission, and after having unsuccessfully appealed to the State Board of Equalization, within 60 days of the decision of that Board, may apply to this Court for a writ of certiorari or review, for the purpose of testing the lawfulness of the order of the Board; that in such proceeding [fol. 110] the cause is to be heard on the record of the Board as certified by it; that no new or additional evidence may be taken in this court; that the findings and conclusions of the Board are final on all questions of fact; that this Court is limited in its review to determining whether the Board has regularly pursued its authority, including the determination as to whether the state or federal constitution has been violated; that upon the hearing this Court shall enter judgment either affirming or setting aside the order or decision of the Board.

The facts giving rise to the present controversy are as follows:

Petitioners are domestic corporations engaged in both intrastate and interstate or foreign commerce. The Matson Navigation Company, in addition to certain purely intrastate activities, is engaged in the business of transporting passengers and freight between ports on the Pacific Coast, including California ports and ports in Hawaii. The Oceanic Steamship Company, in addition to certain purely intrastate activities, is engaged in the business of transporting passengers and freight between ports on the Pacific Coast, including California ports, and ports in Hawaii, the South Seas, Australia and New Zealand. The Matson Terminals, Inc., is interested in this proceeding only in so far as it is a party to a consolidated return. No portion of the tax here under attack is apportionable to this company. All of the transportation activities of the two other petitioners are interstate or foreign.

The tax here under attack is that imposed for the year 1931, measured by the net income of these companies, as provided in the act, for the preceding year. These companies, in filing their return for 1931, omitted from their net income all portions thereof derived from interstate or [fol. 111] foreign commerce. They paid a tax of $12,845.30, computed by applying to their net income, derived solely from intrastate commerce, the statutory rate. In 1930, petitioners made a net income of $2,526,148.22 from their interstate or foreign commerce, a considerable portion of which originated in California. This was entirely omitted from their 1931 return. The Franchise Tax Commission, after notice and a hearing, imposed an additional tax of $19,637.71, which is the tax involved in this proceeding. The Commissioner computed the additional assessment by allocating 22.2% of the total net income derived from interstate and foreign commerce to California, that percentage correctly representing the proportion of the net income derived from business originating in this state. In arriving at this result, the Commissioner allocated to income from business done in this state that portion of petitioners' income from its transportation business done within and without the state which the amount of the business originating in this state bore to the total business done.

Petitioners concede that the percentage adopted by the Commissioner correctly represents that portion of their net income from interstate or foreign commerce derived from the transportation of passengers and freight originating in California. In a comprehensive opinion, the State Board of Equalization sustained the Commissioner, holding that the State has the power to impose a franchise tax upon domestic corporations measured in part by income derived from that proportion of their net income derived from business done in interstate or foreign commerce originating in this State, and that the tax act here involved provides for such a tax.

Petitioners contend that the Franchise Tax Act, properly construed, does not include in its tax base income derived from interstate or foreign commerce. In the event the act be construed to include such income, then petitioners con- [fol. 112] tend that the additional assessment is unconstitutional and void in that it imposes a tax on interstate and foreign commerce contrary to the commerce clause of the Federal Constitution; that it deprives petitioners of the equal protection of the laws and deprives them of their property without due process; that the assessment is also void for lack of uniformity in violation of section 11 of Art. 1 of the State Constitution, and that it also violates sec. 15 of Art. XII of the State Constitution in that it permits foreign corporations similar to petitioners to engage in business in this state on more favorable terms than domestic corporations. All of these contentions are without merit, as will hereinafter appear.

The first major contention of petitioners is that the Franchise Tax Act does not expressly include net income from interstate or foreign commerce and that the act cannot and should not be interpreted as imposing a tax measured by income derived from such business, even though such a tax were within the power of the state to impose. The problem thus presented is solely one of interpretation, turning solely upon the provisions of the act.

The act does not specifically provide that income from business done in interstate or foreign commerce originating in this state shall be included in the measure of the tax. Such specific provision is not necessary, however, if the language employed is broad enough to and actually does include such income, and if such income is not otherwise

excluded. It is our opinion that the provisions of the act include in the measure of the tax all income, however earned, unless such income is specifically excluded, and that since there is no provision specifically excluding the type of income here involved, it is necessarily included.

[fol. 113] Section 4 of the act, as it read in 1931, provides "Every financial, mercantile, manufacturing and business corporation doing business within the limits of this state, of the classes referred to in subdivision 2 (a) of section sixteen of article thirteen of the constitution of this state, shall annually pay to the state, for the privilege of exercising its corporate franchises within this state, a tax according to or measured by its net income * * * at the rate of four per centum * * *" Under this section, considered alone, every corporation of the type classified that does business in this state would be required to pay a tax measured by its entire net income, regardless of source, but it is important to note that the tax is imposed only on those corporations referred to in sec. 2 (a), of section 16, Article XIII, of the Constitution. That section, as it read prior to the 1933 amendments, refers to those corporations doing business in this state which are subject to be taxed pursuant to subdivision (d) of section 14 of Art. XIII of the Constitution. Prior to the adoption of the Corporation franchise tax act here involved, it was held that foreign corporations engaged solely in interstate commerce were not subject to the tax imposed by section 14 (d). (People vs. Pacific Alaska Steamship Company, 182 Cal. 202.) Thus the classification found in section 4 of the act here involved, as above quoted, necessarily excludes from the tax foreign corporations doing business in this State but engaged solely in interstate commerce. This is quite important, because if sec. 4 should be interpreted to include such corporations, the act, as to such corporations, would be unconstitutional. The United States Supreme Court has consistently held that a state may not impose a franchise tax, whether measured by net income or otherwise, upon foreign corporations doing business within the state, if the foreign corporations' business is exclusively interstate in character. (Alpha Portland Cement Co. vs. Massachusetts, 268 U. S. 203; Anglo-Chilean Nitrate Sales [fol. 114] Co. vs. Alabama, 288 U. S. 218).

However, although sec. 4, by its classification, excludes from its provisions foreign corporations doing business in this State and engaged solely in interstate commerce, it includes within its terms foreign corporations engaged in both interstate and intrastate commerce, as well as domestic corporations also so engaged. If Sec. 4 were the only provision of the act on the subject, such corporations would be required to pay a franchise tax for the privilege of engaging in intrastate business in this State, measured by its entire net income, however acquired. However, the act contains other provisions which limit the operation of section 4, above quoted.

Section 5 of the act, as it read in 1931, defines the terms "doing business" as "any transaction or transactions in the course of its business by a corporation created under the laws of this state, or by a foreign corporation qualified to do or doing intrastate business in this state * * *" Section 10 of the act, as it read in 1931, provides: "If the entire business of the bank or corporation is done within this state, the tax shall be according to or measured by its entire net income; and if the entire business of such bank or corporation is not done within this state, the tax shall be according to or measured by that portion thereof which is derived from business done within this state." The section then provides for various formulae whereby the portion of the net income attributable to business done within this state may be determined, and expressly provides that whatever formula is used it must be "fairly calculated to assign to the state the portion of net income reasonably attributable to the business done within this state and to avoid subjecting the taxpayer to double taxation." The formula adopted by the Commissioner in the present case is well calculated to accomplish the purpose provided in the portion of section 10 last quoted.

[fol. 115] We think that by section 4 of the act as limited by sections 5 and 10, as above quoted, the act was intended to and by its terms does impose on the corporations of the type mentioned, for the privilege of exercising their corporate franchises within this State, the tax therein provided, whether such corporation is a foreign or domestic corporation, and whether engaged in interstate or foreign commerce or not, so long as such corporation is doing some intrastate business as well. We are likewise of the opinion

that the act clearly, without ambiguity, imposes on foreign and domestic corporations of the classes mentioned, when they are engaged in both intrastate and interstate commerce, for the privilege of engaging in intrastate commerce, a franchise tax measured by or according to their net income, and that the act provides in such cases that income from interstate or foreign commerce shall be included in measuring the tax to the extent limited in the act.

Petitioners' contention that the words "derived from business done within this state," found in section 10, must be construed to mean business solely done in intrastate commerce, is untenable. When standing alone, such words may be capable of the interpretation contended for (Pacific Express Co. vs. Siebert, 142 U. S. 339), but when read with the rest of section 10 and with sections 4 and 5, they cannot be so interpreted without doing violence to the language used and without imposing limitations not therein contained. Section 10, in the interests of avoiding double taxation, does limit section 4 to the extent of excluding from the measure of the tax income from business done entirely outside the state, but reasonably and properly construed, there is nothing in the section which even by implication excludes from the measure of the tax imposed for the privilege of exercising the corporate franchise to do intrastate business, income from interstate or foreign commerce which is reasonably attributable to business done within this State.

[fol. 116] The above interpretation of the act brings us to the next major question presented, viz., Is the tax here involved, as interpreted above, in violation of the commerce clause and the equal protection and due process clauses of the federal constitution? The contentions made by petitioners on this point are not new. They have been made in many cases and have been completely answered by several decisions of the United States Supreme Court. It is well settled that any tax that is a direct burden on interstate commerce is unconstitutional. Thus, as already stated, a franchise tax measured by net income cannot be imposed on a foreign corporation engaged solely in interstate commerce (Alpha Portland Cement Co. vs. Massachusetts, supra), because such tax attempts to directly burden such commerce. Likewise, a gross receipts tax on a foreign corporation engaged in both interstate and intrastate commerce is unconsti-

tutional as a direct burden on interstate commerce. (United States Glue Company vs. Oak Creek, 247 U. S. 321.) On the other hand, it has been held that a tax upon net income of a foreign or domestic corporation engaged in both interstate and intrastate commerce, where the tax is imposed upon all income earned within the State, including income derived from transactions in interstate or foreign commerce, does not amount to burdening interstate or foreign commerce, and is valid. (United States Glue Company vs. Oak Creek, supra; Peck & Co. vs. Lowe, 247 U. S. 165.) In the Glue Company case, supra, the court pointed out that a tax that affects only indirectly the profits or returns from interstate commerce is valid, and that the franchise of a corporation is property which can be taxed, and then stated: (p. 328.)

"The difference in effect between a tax measured by gross receipts and one measured by net income, recognized by our decisions, is manifest and substantial, and it affords a convenient and workable basis of distinction between a [fol. 117] direct and immediate burden upon the business affected and a charge that is only indirect and incidental. A tax upon gross receipts affects each transaction in proportion to its magnitude and irrespective of whether it is profitable or otherwise. Conceivably it may be sufficient to make the difference between profit and loss, or to so diminish the profit as to impede or discourage the conduct of the commerce. A tax upon the net profits has not the same deterrent effect, since it does not arise at all unless a gain is shown over and above expenses and losses, and the tax cannot be heavy unless the profits are large. Such a tax, when imposed upon net income from whatever source arising, is but a method of distributing the cost of government, like a tax upon property, or upon franchises treated as property; and if there be no discrimination against interstate commerce, either in the admeasurement of the tax or in the means adopted for enforcing it, it constitutes one of the ordinary and general burdens of government, from which persons and corporations otherwise subject to the jurisdiction of the States are not exempted by the Federal Constitution because they happen to be engaged in commerce among the states."

Petitioners concede that a state, under the above authorities, can impose a net income tax and impose the tax on

income from interstate commerce, but contend that the principles applicable to a state's power to impose franchise taxes measured by net income are entirely different from the principles applicable to a state's power to impose taxes upon net income. There are some differences between the two situations, it is true, but such differences do not affect the situation here presented. When a foreign corporation comes into this state and does some intrastate business, as well as interstate business originating here, it cannot be taxed for the privilege of engaging in interstate commerce, but it may be taxed for the privilege of engaging in intrastate commerce. In fixing that tax, [fol. 118] the state may require the corporation to pay for that privilege a tax measured by its net income attributable to business done in this state, regardless of whether the income is derived from intrastate business or from business done in interstate or foreign commerce. The cases of Underwood Typewriter Co. vs. Chamberlain, 254 U. S. 113, and Bass, Ratcliff & Gretton Ltd. vs. State Tax Commission, 266 U. S. 271, squarely support this conclusion. The following language from the Underwood case, supra, p. 120, is pertinent:

"A tax is not obnoxious to the commerce clause merely because imposed upon property used in interstate commerce, even if it takes the form of a tax for the privilege of exercising its franchise within the state. Postal Telegraph Cable Co. v. Adams, 155 U. S. 688, 695, 15 Sup. Ct. 268, 39 L. Ed. 311. This tax is based upon the net profits earned within the state. That a tax measured by net profits is valid, although these profits may have been derived in part, or indeed mainly, from interstate commerce, is settled. U. S. Glue Co. v. Oak Creek, 247 U. S. 321, 38 Sup. Ct. 499, 62 L. Ed. 1135, Ann. Cas. 1918E. 748; Shaffer v. Carter, 252 U. S. 37, 57, 40 Sup. Ct. 221, 64 L. Ed. 445; compare Peck & Co. v. Lowe, 247 U. S. 165, 38 Sup. Ct. 432, 62 L. Ed. 1049. Whether it be deemed a property tax or a franchise tax, it is not obnoxious to the commerce clause."

Since, under the Federal Constitution, the state may impose a franchise tax, measured by income from business done within the state derived from interstate or intrastate commerce, upon foreign corporations doing some intrastate

business, it likewise has at least equal powers as to domestic corporations.

The above analysis completely disposes of petitioners' arguments on the constitutional point under discussion and also fully disposes of petitioners' argument that under the act foreign corporations similar to petitioners (foreign cor- [fol. 119] porations doing some intrastate and some interstate business) are permitted to transact business here on more favorable terms than petitioners. As we have seen, the act makes no distinction, but treats both classes alike. In this connection, it is worthy of mention that the state, so far as domestic corporations such as petitioners are concerned, has seen fit to impose a tax more limited in extent than it could have levied. Unquestionably the state has the power to tax the entire net income of a domestic corporation, from whatever source derived (with certain possible exceptions not here involved, see Lynch vs. People, 55 Sup. Ct. Rep. 16), including its total income from interstate commerce, whether originating in this state or not. (Lawrence vs. State Tax Commission, 286 U. S. 276; Cream of Wheat Co. vs. Grand Forks, 253 U. S. 325; see also Schwab vs. Richardson, 263 U. S. 88.) California, however, in the interests of imposing on domestic corporations engaged in both interstate and intrastate commerce the same tax that is imposed on foreign corporations similarly situated, has limited the tax to that portion of the income derived from interstate commerce attributable to business done in this state. In view of this, petitioners have no just cause for complaint.

We do not find it necessary to discuss the many other points raised by petitioners, nor the many cases cited by them. The above analysis is a complete answer to all of their contentions. We emphasize the fact that the act here involved imposes a tax on a corporation "for the privilege of exercising its corporate franchises within this state." Such a tax, under the authorities already cited, although measured in part by net income from interstate or foreign commerce originating here, does not compel a company to pay for the privilege in order to engage in interstate or foreign commerce.

The order of the respondent Board is affirmed.

[fol. 120] IN SUPREME COURT OF CALIFORNIA

S. F. 15137

MATSON NAVIGATION CO.

vs.

STATE BOARD OF EQUALIZATION

JUDGMENT

BY THE COURT:

The order of respondent Board is affirmed.

[fol. 121] [File endorsement omitted]

[fol. 122] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

PETITION FOR REHEARING—Filed April 16, 1935

To the Honorable William H. Waste, Chief Justice of the Supreme Court of the State of California, and to the Associate Justices of said Court:

The petitioners in the above-entitled action respectfully petition for a rehearing thereof upon the following grounds:

[fol. 123] (1) The Court in its opinion erroneously construed the Bank and Corporation Franchise Tax Act to impose a tax on corporations for the privilege of exercising their corporate franchises within the State, measured by net income from interstate and foreign commerce. In so doing, the Court disregarded the plain language of the Act and all applicable rules of construction.

(2) The Court in its opinion construed the Act to impose a tax for the privilege of doing interstate and foreign business, and the Act, as so construed, and the assessment of the Franchise Tax Commissioner violate the constitutional rights and immunities of the taxpayer guaranteed by the Constitution of the United States.

(3) The Court in its opinion construed the act to measure the tax imposed thereby by income from interstate and foreign business and, so construed, the Act in effect taxes the privilege of doing interstate and foreign business, thereby violating the constitutional rights and immunities of the taxpayer guaranteed by the Constitution of the United States.

(4) The Act, as construed by the Court, and the assessment of the Commissioner deny the petitioners the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States. [fol. 124] The Act, as construed by the Court, and the assessment violate the provisions of Section 8 of Article I of the Constitution of the United States. The Act, as construed by the Court, and the assessment deprive the petitioners of their property, without due process of law and without just or any compensation, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Before proceeding with a discussion of the respects in which we are convinced the Court erred in its opinion, we wish to point out that no decision, either of the United States Supreme Court, or of any other court, has ever upheld a state tax upon the privilege of doing business measured in part by net income from interstate or foreign commerce. The opinion stands alone and is a departure from established principles of constitutional law.

The Opinion on File Herein Disregards the Literal Meaning of the Language of the Bank and Corporation Franchise Tax Act and All Applicable Rules of Construction in Holding That Net Income from Interstate Business is Included in the Measure of the Tax

Whether or not the Act includes net income from inter- [fol. 125] state business in the measure of the tax depends entirely upon the meaning of the phrase "business done within this state" in Section 10 of the Act. That section provides that if the entire business of the corporation is not done within this state, the tax shall be measured by that portion of the corporation's net income which is derived from "business done within this state." If the phrase "business done within this state" does not include inter-

state business within its meaning, then net income from interstate business is not included in the measure of the tax.

The two phrases "business done within this state" and "intrastate business" have the same meaning. "Within" means, literally, "inside of" (Funk and Wagnall's Standard Dictionary; Webster's Universal Dictionary; The Oxford Dictionary), and the prefix "intra" means "within" (ibid.). The phrase "business done within this state" therefore means precisely the same thing as the phrase "intrastate business," and the cases construing the former are uniform in so holding (Pacific Express Co. v. Seibert, 142 U. S. 339; Converse v. Northern Pacific Railway Co., 2 F. (2d) 959).

We respectfully submit that the Court's conclusion that the measure of the tax includes net income from any and all business which is not "done entirely outside the state" is [fol. 126] unjustified by anything in the Act. The Act does not purport to include in the measure income from any and all business not "done entirely outside of the state"; it purports to include only income "from business done within this state," and, as held by the Supreme Court of the United States:

> "'Business done within this state' cannot be made to mean business done between that state and other states."
>
> Pacific Express Co. v. Seibert, supra.

We cannot understand the suggestion that to give the phrase "business done within this state" its literal meaning would do violence to the language of preceding provisions of the Act. We are unable to find, and the opinion points out, no provision of the Act with which a literal interpretation conflicts. Section 10 contains the only provision which purports to apply where the corporation does not do all of its business within this state, and we cannot see how to give that provision its literal meaning can do violence to other provisions which do not purport to apply. There is nothing in the rest of the Act to indicate that the Legislature did not mean what it said in Section 10. As pointed out by the United States Supreme Court, the violence is done when "business done within this state" is made to mean business done between this state and others. [fol. 127] We respectfully submit that if the opinion should become final, it would overrule a long line of prior

decisions of this Court and depart from what is universally regarded as settled law, for the opinion, far from construing the Act strictly against the state, construes it strictly against the taxpayers. The question is not as suggested in the opinion, whether the Act excludes from the measure of the tax income from interstate or foreign business. The question is whether the Act includes that income. As we have pointed out, Section 10 contains the only provision which purports to apply where the corporation does not do all of its business within this state, and that provision purports to include in the measure of the tax only net income from "business done within this state," or, interpreted literally "intrastate business." To give the phrase "business done within this state" a broader meaning, is to absolutely disregard the settled rule that a tax statute is to be construed strictly against the state.

We respectfully submit that the opinion on file herein errs in construing the Act to include income from interstate business in the measure of the tax, and that the violence which this error does to settled principles requires that it be rectified. If "business done within this state" includes interstate business within its meaning, then the United [fol. 128] States Supreme Court and the dictionaries are wrong. To so construe the phrase violates every applicable principle of statutory construction.

The Opinion on File Fails to Notice That, as Construed by It, the Act by Its Terms Imposes a Tax for the Privilege of Doing Interstate Business

A state cannot tax a corporation for the privilege of doing interstate business. If, by the terms of a statute, a tax is imposed for the privilege of doing interstate as well as intrastate business, that tax is unconstitutional (Leloup v. Port of Mobile, 127 U. S. 640). It follows that if the tax is for the privilege of doing interstate as well as intrastate business, it is unconstitutional at least to the extent that it is for the privilege of doing interstate business.

The Court in its opinion construed the phrase "business done within this state" to include not only intrastate business, but also, interstate and foreign business. The phrase "within this state" upon which the question of construction hinges, is used in the act to define both the subject and the measure of the tax. It is thus apparent that the Court has

construed the Act to expressly impose a tax upon the privilege of doing interstate and foreign business.

[fol. 129] As so construed, the Act is clearly unconstitutional (Leloup v. Port of Mobile, supra). The Court itself has recognized this in its discussion of Section 4. The Court expressly states that if it were not for the limitation contained in Section 4 to corporations taxable under the old constitutional provision, the Act would purport to tax foreign corporations engaged exclusively in interstate and foreign commerce, and would be unconstitutional. Aside from that limitation, therefore, the Act purports to tax the privilege of doing interstate and foreign as well as intrastate business.

It follows inevitably from this construction of the Act that it is, in part at least, unconstitutional because the privilege of doing interstate and foreign business is a subject of the tax. Leloup v. Port of Mobile, supra, governs the case at bar. In that case the Port of Mobile had imposed a flat tax of $225.00 upon a telegraph company "for the privilege of doing the business in which the telegraph company was engaged." The taxpayer was doing interstate as well as intrastate business and the tax therefore was held invalid because not limited by the wording of the Act to the privilege of doing intrastate business.

We respectfully submit that the foregoing objection is fatal. The respondent, in its brief, made no attempt to [fol. 130] meet the objection and it went unnoticed in the opinion on file herein. A rehearing is necessary to enable this Honorable Court to give it consideration.

The Opinion on File Herein Ignores a Principle Established by the United States Supreme Court and Misconstrues the Decisions of That Court in Holding That the Act as Construed in the Opinion Does Not in Effect Tax the Privilege of Doing Interstate Business

It is true that a state may tax the privilege of doing intrastate business. But it cannot, under the guise of a tax upon that privilege, levy a tax which is in effect upon the privilege of doing interstate and foreign business as well. The opinion construes the act to include income from interstate and foreign business in the measure of the tax. It is obvious that income from interstate and foreign business, while it is a fair measure of the value of the privilege of

doing that business, has no relation to the value of the privilege of doing intrastate business. Any attempt to include that income in the measure of the tax is an attempt to tax the privilege of doing interstate and foreign business.

The above reasoning has been employed time and again by the Supreme Court of the United States, and wherever it has been applicable the tax has been held bad. Thus in [fol. 131] Air-Way Electric Appliance Corp. v. Day, 266 U. S. 71, the Court said of a tax similar to the one imposed by the California Act:

"Without holding that such a charge must be measured by the value of the privilege for which it is imposed, it may be said that some relation to such value is a reasonable requirement."

The same principle was applied in Sprout v. South Bend, 277 U. S. 163, where the Court declared:

"A state may, by appropriate legislation require payment of an occupation tax from one engaged in both intrastate and interstate commerce * * * but in order that the fee or tax shall be valid it must appear that it is imposed solely on account of the intrastate business; that the amount exacted is not increased because of the interstate business done; * * *."

Likewise, in Alpha Portland Cement Co. v. Massachusetts, 246 U. S. 134, the Court held:

"* * * The determination of real value with fair accuracy is essential. Many methods adapted to that end have been accepted, but this does not tend to support an excise laid upon a foreign corporation on account of interstate transactions."

[fol. 132] The foregoing decisions of the United States Supreme Court have never been overruled or criticized. The principle which they enunciate and apply is squarely applicable to the case at bar and compels the conclusion that the tax is invalid in so far as it is measured by net income from interstate commerce.

None of the cases cited by the respondent in its brief or by the Court in its opinion have the least tendency to uphold the validity of the tax under consideration. It is quite true, as held in United States Glue Co. v. Town of

Oak Creek, 247 U. S. 321, that a state may tax net income from interstate commerce. It is equally true, however, that a state cannot tax the privilege of doing interstate and foreign business, either directly or in the guise of a tax upon the privilege of doing intrastate business. We are concerned in the case at bar with a privilege tax, not an income tax. If this Court is right in its construction of the Act, then the Legislature, while purporting to tax the privilege of doing intrastate business, has attempted to get at the value of the privilege of doing interstate and foreign business by including in the measure of the tax income therefrom, which bears no relation to the value of the privilege of doing intrastate business. Under the well settled principle to which we have pointed, the tax therefore is invalid. [fol. 133] Peck & Co. v. Lowe, 247 U. S. 165, involved the validity of the federal income tax as imposed upon income from the export trade. It is disposed of by our remarks about United States Glue Co. v. Oak Creek, as also is Lawrence v. State Tax Commission, 286 U. S. 276, involving a state income tax upon the income of an individual earned outside of the state.

Underwood Typewriter Company v. Chamberlain, 254 U. S. 113, and Bass Ratcliff & Gretton v. Tax Commission, 266 U. S. 271, each involved a privilege tax measured by net income earned in the state. In each case the taxpayer objected that the formula used by the state to determine the amount of net income earned in the state, operated to include income actually earned outside of the state. In each case it was held that the formula was reasonably calculated to attribute to the state only the net income earned therein. In neither case was any part of the income included in the measure of the tax derived from interstate or foreign business.

Cream of Wheat Co. v. Grand Forks, 253 U. S. 325, involved a tax upon a domestic corporation measured by the value of its intangible property. The taxpayers argued that the tax was invalid because in effect it was upon property located outside of the state. The Supreme Court properly held that intangible property is located at the domicile [fol. 134] of the owner, which in the case of a corporation is the state of incorporation. The property used to measure the tax, therefore, was not located outside of the state.

In Schwab v. Richardson, 263 U. S. 88, this state had

taxed a domestic corporation for the privilege of corporate existence and had measured the tax by its property wherever located. Property wherever located and however used of course bears some relation to, and is an indicia of, the value of the privilege of corporate existence.

The foregoing cases are all that are cited in the opinion on file upon the point under consideration. Not one of them is inconsistent with the principle enunciated and applied in Air-Way Electric Appliance Corp. v. Day, Sprout v. South Bend, and Alpha Portland Cement Co. v. Massachusetts, and that principle is squarely applicable to the case at bar. Income from interstate and foreign business, or property used therein, may be included in the measure of a privilege tax when, but only when, it bears some reasonable relation to the value of the particular privilege taxed. The Supreme Court has never departed from this principle, and it remains the law.

Respectfully submitted, Brobeck, Phleger & Harrison, Attorneys for Petitioner.

[fol. 135] Receipt of a copy of the within is hereby admitted this 16 day of April, 1935.

U. S. Webb, Atty. General, Attorney for Respondents.

[fol. 136] IN SUPREME COURT OF CALIFORNIA

In Bank

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—Filed April 25, 1935

BY THE COURT:

The petition for a rehearing herein is denied.
Dated: April 25, 1935.

Waste, Chief Justice.

[File endorsement omitted.]

[fols. 137 & 138] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 139] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Aug. 6, 1935.

Come now the appellants in the above entitled cause and state that the points upon which they intend to rely in this Court in this case are as follows:

Point No. 1. The decision of the Board of Equalization violates the Constitution of the United States.

Point No. 2. The State Bank and Corporation Franchise Tax Act of California (California Stats. 1929, Chapter 13, [fol. 140] as amended, California Stats. 1929, Chapter 781), is repugnant to the Constitution of the United States.

Point No. 3. Said act taxes the privilege of doing interstate and foreign business, inasmuch as it purports to impose a tax on the privilege of doing business measured in part by net income derived from interstate and foreign business.

Point No. 4. Said act violates Section 8 of Article I of the Constitution of the United States, inasmuch as it purports to impose a tax on the privilege of doing business in interstate and foreign commerce.

Point No. 5. Said act denies to petitioners the equal protection of the laws guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States, inasmuch as it purports to impose a tax on the privilege of doing interstate and foreign commerce.

Point No. 6. Said act deprives petitioners of their property without due process of law and without just or any compensation, inasmuch as it purports to impose a tax on the privilege of doing interstate and foreign commerce.

Point No. 7. Said act burdens interstate and foreign commerce in violation of Section 8 of Article I of the Constitution of the United States, inasmuch as it purports to [fol. 141] impose a tax on the privilege of doing business measured in part by net income from interstate and foreign business.

Point No. 8. Said act denies to petitioners the equal protection of the laws, inasmuch as it purports to impose a tax

for the privilege of doing business measured in part by the net income derived by petitioners from interstate and foreign business.

Point No. 9. Said act deprives the petitioners of their property without due process of law and without just or any compensation, inasmuch as it purports to impose a tax on the privilege of doing business measured in part by net income derived by petitioners from interstate and foreign business.

Point No. 10. Said act burdens interstate and foreign commerce in violation of Section 8 of Article I of the Constitution of the United States, inasmuch as it purports to impose a tax on the privilege of doing business within the state measured in part by net income derived from interstate and foreign business carried on therein.

Point No. 11. Said act denies to petitioners the equal protection of the laws, inasmuch as it purports to impose a tax for the privilege of doing business within the state measured, in part, by net income derived by the taxpayer from interstate and foreign business carried on therein.

[fol. 142] Point No. 12. Said act deprives the petitioners of their property without due process of law and without just or any compensation, inasmuch as it purports to impose a tax on the privilege of doing business within the State, measured, in part, by income derived from interstate and foreign business carried on therein.

Point No. 13. Said act is invalid when applied to interstate or foreign transportation business.

Point No. 14. Said act is invalid when applied to include, within the measure thereof, income from interstate or foreign transportation business.

Point No. 15. Said act denies to petitioners the equal protection of the laws, because, as a condition of the right to do intrastate business, it purports to impose a tax measured in part by income from interstate and foreign business carried on within the boundaries of the state.

The decision of the Board of Equalization hereinbefore referred to is the decision that was upheld by the judg-

ment of the Supreme Court of the State of California, from which this appeal has been taken and allowed.

The appellants further state that the whole of the record, as filed, is necessary for the consideration of the case, and that all parts of the record, as filed, are deemed necessary [fol. 143] to be printed.

Dated: July 30th, 1935.

Herman Phleger, Maurice E. Harrison, Howard J. Linn, Gregory A. Harrison, Attorneys for Petitioners.

[fol. 144] Due service and receipt of a copy of the within Statement of Points to be Relied Upon and Designation of the Parts of the Record to be Printed is hereby acknowledged this 30th day of July 1935.

U. S. Webb, Attorney General of the State of California by H. H. Linney, Deputy Attorney General.

[fol. 145] [File endorsement omitted]

Endorsed on cover: File No. 39,900. California, Supreme Court. Term No. 346. Matson Navigation Company, The Oceanic Steamship Company and Matson Terminals, Inc., Appellants, vs. State Board of Equalization of the State of California, et al. Filed August 6, 1935. Term No. 346 O. T. 1935.